No. 80-795

In The

Supreme Court of the United States

OCTOBER TERM, 1980

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, the Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,

Petitioners,

— *vs.* —

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF FOR THE STATE OF NEW YORK, Amicus Curiae

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BRIEF FOR THE STATE OF NEW YORK, Amicus Curiae

INTEREST OF THE AMICUS CURIAE

The State of New York holds an annual Fair on state-owned Fairgrounds just outside the city of Syracuse, in Central New York. The Fair is conducted jointly by the State Department of Agriculture and Markets and the State Industrial Exhibit Authority, each of which owns a portion of the buildings and grounds. Each agency, under its rule-making authority, has adopted a "booth rule" for the premises which it owns. See § 350.16(j) of the Rules and Regulations of the Department,

adopted pursuant to § 31-b of the New York Agriculture and Markets Law, and § 13 of the Rules and Regulations of the Exhibit Authority, adopted pursuant to § 1654(c) of the New York Public Authorities Law.

Because of their joint operation of the State Fair, the agencies' rules are referred to collectively as "the New York State Fair Booth Rule." The Booth Rule requires that all solicitations of money be made from a booth, but it does not restrict roving discussion and distribution of literature. A7-8, A35*.

The New York State Fairgrounds comprise a total of 350 acres, including open spaces, and large parking lots outside the gates. There are 40 acres within the gates. After deducting the acreage covered by the race track, grandstand, and infield parking area, the Fairgrounds proper remains, an area of 20 acres within which the exhibits and pedestrian walkways are found. A7. Attendance at the Fair has risen steadily from 526,000 at the seven-day 1977 Fair, to 686,000 at the ten-day 1978 Fair, to 701,000 at the ten-day 1979 Fair. *Id.* Among the exhibitors at the Fair have been agricultural and industrial exhibitors as well as religious, fraternal and political groups. Some of the latter have solicited contributions from fairgoers and all were confined to booths for solicitation regardless of their affiliation, but were not restricted from roving distribution of literature or discussion with fairgoers. A7-8, A35.

The right of the International Society for Krishna Consciousness, Inc. ("ISKCON") and its members ("Krishnas" or "devotees") to have unrestricted access to the New York State Fairgrounds for the solicitation of funds has been the subject

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*References in this form are to the Appendix herein, which contains the MEMORANDUM-DECISION AND ORDER of the United States District Court for the Northern District of New York in *International Society for Krishna Consciousness, Inc., et al.* v. *J. Roger Barber, et al.*, 77-CV-328 (N.D.N.Y. August 25, 1980).

of litigation initiated by ISKCON in 1977. As action was commenced by the filing of a Verified Complaint challenging the constitutionality of the New York State Fair Booth Rule, on August 27, 1977, the day before the 1977 State Fair was to begin. Jurisdiction of the District Court was based upon 28 U.S.C. § 1343(3) and (4), and the cause of action was said to arise under 42 U.S.C. § 1983. See *ISKCON et al.* v. *J. Roger Barber, et al.*, 77-CV-328 (N.D.N.Y. August 27, 1977).

On the day the 1977 Fair began, the Honorable Edmund Port, Chief Judge of the Northern District of New York, granted a temporary restraining order allowing the Krishnas virtually unlimited access to the fair for the purpose of disseminating literature and soliciting money. On August 25, 1978, the day before the 1978 Fair was to begin, ISKCON and another devotee filed a new complaint challenging the booth rule although the 1977 action was still pending. The Honorable Howard G. Munson, District Judge, granted a temporary restraining order allowing the Krishnas access to the fair without observing the booth rule, subject to a number of conditions proposed by the Krishnas. He did so based on the 1977 complaint, and dismissed the 1978 action. Under the temporary restraining order, the Krishnas were to wear identification badges and display them prominently, register with fair authorities, only engage in distribution and solicitation with fairgoers who agreed, refrain from touching anyone without his consent, and restrict their activities to certain places and appropriate times. A15.

On August 30, 1979, five days after the commencement of the 1979 Fair, the Krishnas obtained a temporary restraining order from Judge Port, allowing them access to the Fair on the same terms as embodied in Judge Munson's 1978 temporary restraining order. The next day Judge Port preliminarily enjoined the defendants (hereinafter "the State of New York" or "New York Fair Officials") from enforcing the Booth Rule against the Krishnas, provided that they complied with a

number of restrictions. Although not identical with the restrictions previously imposed, these too required that the Krishnas register, wear an identification card in a visible manner, refrain from unconsented touching of fairgoers, and restrict their activities to specified places and times. A6.

In early 1980, the State conducted extensive pre-trial discovery, including a demand for production of documents and things and five days of depositions of the corporate Plaintiff and individual Plaintiff Alan Attias. On April 21, 1980, now Chief Judge Munson denied a motion by Plaintiffs for summary judgment,[1] and trial on the merits began. The trial lasted for 11 days and produced 44 witnesses, more than a hundred exhibits and a transcript in excess of 1500 pages. Extensive portions of the pre-trial depositions were received in evidence as was the entire deposition of ISKCON's former treasurer, taken during the course of the trial. The trial herein was, to counsel's knowledge, the first and only plenary trial to date in a case involving the rights of Krishnas to engage in solicitation and distribution at a fairgrounds. Without question, the trial produced the most extensive factual record ever developed in a case involving such rights.

The District Court, relying upon the extensive record developed at trial, found a pervasive pattern of fraud and abuse by Krishnas in the course of their solicitations, which they seek to bring under the aegis of the religious ritual of *Sankirtan*. A9. In addition to physical and verbal assaults, A31, the court found numerous examples of misrepresentation deliberately permitted by ISKCON, A26, *see* A30. These included not mentioning the solicitor's Krishna affiliation, slurring the word

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[1] Summary judgment has also been denied by Judge Munson in an unreported MEMORANDUM-DECISION AND ORDER of August 22, 1979. The court held that summary judgment was improper because a full development of the facts was required to determine, in light of the State's claims, what restrictions, if any, should be placed on the activities of ISKCON members at the New York State Fair.

"Krishna" to sound like "Christian," and making up phony charitable causes to elicit donations, A22-23; misrepresentation of products, particularly record albums which falsely purported to contain music performed by popular recording artists, A23; and the wearing of ordinary Western attire, rather than robes, as a "disguise" while soliciting, A21. The court noted that Krishna members were taught techniques such as targeting specific groups, e.g., unsophisticated teenagers and handicapped persons, A27, miscounting or withholding change, and lying or trespassing on private property, A23, all as acceptable means of soliciting donations. The court also noted specific instances of such fraudulent techniques being used, both at the Fair, A24-25, and in the city of Syracuse, A27-28, by Krishna devotees. The court also found repeated instances of Krishna violations of previous court orders relating to their activities at the Fair. A32. Perhaps most importantly, the court found that these activities were not isolated instances of misconduct by hard-to-control devotees, but rather a pattern of deceptive practices, identical in nature, practiced throughout New York, Massachusetts and Maryland and condoned by ISKCON, which used "experienced 'thieves' to teach its new members how to solicit money from the public in exactly the same way." *Id.*

An appeal was taken by ISKCON from the District Court's August 25, 1980 MEMORANDUM-DECISION AND ORDER, to the United States Court of Appeals for the Second Circuit.[2] (No. 80-7709 filed August 26, 1980) The appeal is now pending in that court, and oral argument is scheduled for the week of May 4, 1981. The State of New York has also filed in this Court, pursuant to 28 U.S.C. § 1254(1), a Petition for

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[2] ISKCON also sought a stay of the District Court's judgment and a preliminary injunction allowing them to circulate and solicit money freely at the 1980 New York State Fair. A copy of the Second Circuit's decision of August 28, 1980 denying the relief requested is contained in Appendix B, *infra*.

certiorari to the Second Circuit *in advance of judgment.* See Petition for Writ of Certiorari in *J. Roger Barber, et al.* v. *ISKCON, et al.* (No. _____ filed March ____, 1981).

This amicus curiae brief is being filed by the State of New York because of the striking similarity between the *Heffron* and *Barber* cases. Each involves the same constitutional issue and virtually identical facts, although a full record was developed at trial in *Barber,* whereas *Heffron* was decided on cross-motions for summary judgment. Both cases involve state fair booth rules, applied non-discriminatorily and without regard to content, challenged on First Amendment grounds by the Krishnas whose devotees seek unrestricted rights to solicit money from fairgoers, and defended by the respective states as a reasonable form of time, place and manner regulation. Both require that the solicitation of money and the sale of products or literature be done from a booth; the New York rule, in addition, allows roving discussion and distribution of literature. A35. Both states have posited similar public interests to justify their booth rule: (1) the prevention of fraudulent practices typical of Krishna solicitors and uncontrollable by other means; (2) the control of vehicular and pedestrian traffic; and (3) fair accommodation of competing rights among exhibitors and fairgoers.

The brief is devoted primarily to a discussion of the first of these justifications -- the prevention of a pervasive pattern of fraud and abuse, typical of Krishna solicitors and uncontrollable by other means -- for two reasons. One is that State Fair officials of the *amicus,* when sued by ISKCON in *Barber,* placed "the foundation of their argument on the State's interest in preventing fraud." A39. The other is that the record made during the 11 day plenary trial that was held in New York provides strong additional support to the anti-fraud justification offered here by the State of Minnesota. As the district court noted in *Barber,* it was presented with an opportunity unlike that of any other court to understand the various methods employed by the Krishnas when engaged in distribution and

solicitation. A12. Also because of the plenary trial, the court in *Barber* had before it not only the Krishnas' portrayal of how they carry on their activities, but the state's evidence, which expanded upon and contradicted much of what the Krishnas presented. A19.

The result was a holding that a booth rule is "a reasonable means to combat widespread fraud that cannot be effectively checked by the criminal justice system," A43, and a recognition that "the regulatory methods employed in the past by various government officials and courts [in cases which ISKCON will doubtless cite to the Court] have facilitated the Krishnas in perpetuating their illicit acts." A43. The *amicus curiae* submits that the same is true in the instant case and that the judgment of the Minnesota Supreme Court should therefore be reversed.

ARGUMENT

II

A STATE FAIR BOOTH RULE IS A REASONABLE TIME, PLACE AND MANNER REGULATION WHICH DOES NOT VIOLATE ISKCON'S RIGHT OF EXPRESSION.

The State of New York respectfully submits that a State Fair Booth Rule is a reasonable time, place and manner regulation which does not violate ISKCON's right of expression,[3]

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[3] It is not significant whether one is engaged in speech, association, assembly, or petition, "All four rights are now considered to be elements of a broad right to freedom of expression." J. Nowak, R. Rotonda, and J. Young, CONSTITUTIONAL LAW 829 (1978) (hereinafter "NOWAK"). See also cases cited at NOWAK, footnote 14. Furthermore, in *ISKCON* v. *EVANS*, 440 F. Supp. 414 (S.D. Ohio 1977), Judge Kinneary allowed the plaintiffs' free assembly claims to be included under their

(footnote cont'd.)

for the reasons set forth below. Before considering the reasons, however, it is well to establish some interpretive guidelines.

The general language of the First Amendment[4] has been given specific meaning in a wide variety of settings through a vast body of case law. The subdivisions in this First Amendment jurisprudence reflect the differing considerations involved. The appropriate considerations, and hence the constitutional rules, will differ, for example, depending upon whether the issue is subversive advocacy, "symbolic speech" or obscenity. All three problems involve the same constitutional provision -- the free speech clause -- but the similarity ends there.

Justice Felix Frankfurter once admonished that, in First Amendment analysis, one must "first set to one side decisions which are apt to mislead rather than assist." *Niemotko* v. *Maryland*, 340 U.S. 268, 276 (1951). He was saying that First

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free speech claims and stated that "(s)ince the First Amendments free speech protection encompasses not only the right to speak but also, within reasonable limits, the right to communicate, . . . the free assembly claims raised here will be governed by the same considerations as the free speech claims and need not receive independent analysis." *Id.* at 421. Even if there is an independent right of assembly, which ISKCON could claim to rely upon, it offered no proof of any attempt to exercise such a right in any of the State Fair cases, nor proof of any attempt by defendants to abridge such a right.

[4] The First Amendment, of course, does not apply to the states directly. *Barron* v. *The Mayor And City Council Of Baltimore*, 7 Pet. 243, 8 L.Ed. 672 (1833). Technically speaking, ISKCON's claims are based upon the Fourteenth Amendment, since First Amendment rights are incorporated in the concept of ordered liberty found in the Due Process clause of the Fourteenth Amendment and thus made applicable to the states. *Gitlow* v. *New York*, 268 U.S. 652 (1925); *Stromberg* v. *California*, 283 U.S. 359 (1931); *Near* v. *Minnesota*, 283 U.S. 697 (1931); and *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940). For the sake of clarity the claimed rights will be referred to as First Amendment rights.

Amendment precedents are not fungible, and that to find the appropriate considerations and the relevant precedents, one must look in the correct jurisprudential "pigeonhole."

The pigeonhole in which to seek the answers for this case has been clearly labeled by Professor Gerald Gunther; it involves

> EXPRESSION IN PUBLIC PLACES AND THE MAINTENANCE OF LOCAL PEACE AND ORDER: REGULATING THE "TIME, PLACE AND MANNER" RATHER THAN THE CONTENT OF SPEECH IN THE "PUBLIC FORUM."

G. Gunther, Constitutional Law *et seq.* (10th ed. 1980) (hereinafter "Gunther"), The "Time, Place and Manner" pigeonhole also includes a subsection which pertains directly to this case; as Gunther states, it involves:

> ACCESS TO PUBLIC PLACES OTHER THAN THE TRADITIONAL STREETS AND PARKS: EXPANDING CONTOURS OF THE PUBLIC FORUM.

Gunther at 1278 *et seq.*

The State of New York respectfully submits that application of the appropriate considerations and the relevant precedents demonstrates that a State Fair Booth Rule is a reasonable time, place and manner regulation which does not violate ISKCON's First Amendment right of expression.

A. A Fairgrounds is not an Unlimited Public Forum.

The State of New York respectfully submits that a State Fair Booth Rule is a reasonable time, place and manner regulation, which does not violate ISKCON's First Amendment right of expression, because a fairgrounds is not an unlimited public forum. The principles governing the nature and scope of the right of First Amendment access to the public forum evolved between the 1930's and the 1950's in a series of cases involving the traditional public forum, the streets and the parks. L. Tribe, *American Constitutional Law* § 12-21 (1978), at p. 688 n.2. These cases established the basic Time, Place and Manner

framework which still governs. *Id.* at p. 689. Although a large majority of the cases involved the Jehovah's Witnesses, this Court analyzed the cases wholly or largely on a free expression, rather than a free exercise of religion, basis. Gunther at 1581, n.1.

The civil rights and anti-war movements of the 1960's and the 1970's spawned new issues regarding even the traditional public forum, such as mass demonstrations in a racially-charged climate. Kalven, *The Concept of the Public Forum: Cox* v. *Louisiana*, 1965 Sup. Ct. Rev. 1. They also led to attempts to gain First Amendment access to a variety of non-traditional public forums. Gunther at 1278 *et seq.*

ISKCON devotees exercise their claimed rights in both the traditional and the non-traditional public forum. They are dispatched in organized parties, varying in number, usually from one of ISKCON's many urban temples; there has also been a traveling party of solicitors, based in Pennsylvania, with nation-wide jurisdiction. A11-12. The devotees solicit in the traditional streets and parks of municipalities, A27-28, and at such non-traditional, privately-owned forums as shopping centers, *Lenrich Associates* v. *Heyda*, 504 P.2d 112 (Oregon 1972); A11; *see* A23, and race tracks, A11. They do so in ordinary casual clothes; the men wear casual slacks and shirts and cover their shaved heads with either a wig or a cap of some sort. A21. ISKCON does not initiate litigation to establish their right to solicit at these locations in this fashion. On the contrary. As the court found in *Barber*, devotees use what might be called the "hit-and-run" method of solicitation, never bothering to seek authorization from public officials, A23, or permission from private property owners. *Id.*[5]

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[5] As an example of the Krishnas' efforts to solicit even on private property where they have no federal or state constitutional right to do so, *see Lenrich Associates* v. *Heyda*, *supra*. There the plaintiffs, owners of a private shopping center, obtained an injunction to prevent further unauthorized Krishna solicitation on their property.

ISKCON devotees also exercise their claimed rights in a variety of non-traditional, mostly public forums, from highway rest stops, *ISKCON* v. *Hays*, 438 F. Supp. 1077 (S.D. Fla. 1977), to airline, bus and railroad terminals, *e.g.*, *ISKCON* v. *Eaves*, 601 F.2d 809 (5th Cir. 1979), to stadiums, *ISKCON* v. *Stadium Authority of Pittsburgh*, 479 F. Supp. 792 (W.D. Pa. 1979), to performing arts centers, *United States* v. *Boesewetter*, 463 F. Supp. 370 (D.D.C. 1978) and, apparently, any other public place, such as the World Trade Center, *ISKCON* v. *McAvey*, 450 F. Supp. 1265 (S.D.N.Y. 1978), where "misguided souls" -- to use the Krishnas' frame of reference -- tend to congregate. A10. Last but by no means least, they seek access to fairgrounds, whether public *e.g.*, *Edwards* v. *Maryland State Fair*, 628 F.2d 282 (4th Cir. 1980), or private, *Mechanic* v. *Expo Center of Texas*, No. CA-1-79-51 (N.D. Tex. August 18, 1980), state, *e.g.*, *ISKCON* v. *Barber*, No. 77-CV-328 (N.D.N.Y. August 25, 1980), county, *Gorrick* v. *Erie County Agricultural Society*, Civ. 78-505 (W.D.N.Y.), or local, *Mechanic* v. *Expo Center of Taylor County*, supra. ISKCON's nation-wide litigation strategy is directed to obtaining access to these non-traditional forums -- especially terminals and fairgrounds where the "hit-and-run" method of solicitation cannot effectively be employed.

The State of New York does not contend that the Krishnas have no right of First Amendment access to a governmentally-owned Fairgrounds. Rather it contends that the Booth Rule is a reasonable and appropriate way of regulating the time, place and manner of their access to such a non-traditional publicly-owned forum.

This Court has made clear that public space is not automatically an appropriate forum for the exercise of the First Amendment right of expression. It has cautioned that, even in the traditional public forum of the streets, "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions and beliefs to express may address a group at any public place and at any time." *Cox* v. *Louisiana*, 379 U.S. 536, 554 (1965)

This cautionary note is all the more appropriate when the forum in question is a non-traditional one, as this Court's decisions make clear. *Grayned* v. *Rockford*, 408 U.S. 104 (1972), involved an ordinance designed to prevent demonstrations from disrupting the atmosphere necessary for learning in public schools, by prohibiting such noisy demonstrations in the vicinity of school grounds. As the Court there stated, "[o]ur cases make . . . clear . . . that reasonable 'time, place and manner' regulations *may be necessary to further significant governmental interests*, and are permitted." *Id.* at 115 (emphasis added). Similarly, *Lehman* v. *Shaker Heights*, 418 U.S. 298 (1974), involved a ban on political advertising in publicly owned transit cars and buses. There the Court reaffirmed that "the nature of the forum and the conflicting interests involved have remained important in determining the degree of protection afforded by the [First] Amendment to the speech in question." *Id.* at 303.

The lower federal courts have also recognized the necessity to consider the nature of the non-traditional forum in judging the reasonableness of time, place and manner regulations. In *Wolin* v. *Port of New York Authority*, 392 F.2d 83 (2d Cir. 1968), the Second Circuit struck down a blanket prohibition against leafleting in the Port Authority Bus Terminal at Eighth Avenue and 40th Street, Manhattan, but stated that it would be legitimate to limit "the specific places within the building where the right of expression may be exercised." *Id.* at 94. The eventual solution was to allow the plaintiffs fixed table space from which to disseminate their political literature. See also *Wright* v. *Chief of Transit Police*, 558 F.2d 67 (2d Cir. 1977) (government has interest in maintaining safe, convenient and orderly flow of pedestrian traffic in the subways).

In *ISKCON* v. *McAvey*, 450 F.Supp. 1265 (S.D.N.Y. 1978) the issue was access by the Krishnas to the World Trade Center. The Center limited the number of devotees to a maximum of ten, and further limited the times and places where they could engage in the exercise of their claimed right of expression.

The District Court, relying upon *Wolin*, reached a number of conclusions which recognized the nature of the particular forum, a large multi-building office and commercial complex. It upheld the limit of ten on the number of permits issued to Krishnas, as a reasonable accommodation between their First Amendment rights and the proper functioning of the Center. The court also found reasonable the limit of one devotee in any particular place, a complete ban of devotees from high traffic areas to prevent confusion and crowding, exclusion of devotees from certain areas where it would disrupt the comfort of workers and visitors to be forced to get up and move away from unwanted communication, and restrictions on solicitation during high traffic "rush hour" periods. *Id.* at 1271. For other ISKCON decisions recognizing that public space is not automatically a public forum, see *ISKCON* v. *Eaves*, 601 F. 2d 809 (5th Cir. 1979) (airport); *Liberman* v. *Schesventer*, 447 F. Supp. 1355 (M.D. Fla. 1979) (national park); and *United States* v. *Boesewetter*, 463 F. Supp. 370 (D.D.C. 1978) (Kennedy Center).

A fairgrounds is no more a completely unlimited forum for First Amendment expression than the non-traditional public spaces just discussed, and a number of courts have upheld the Booth Rule as a reasonable time, place and manner regulation, considering the nature of this particular forum: *E.g.*, *ISKCON* v. *Barber*, No. 77-CV-328 (N.D.N.Y. August 25, 1980); *Hynes* v. *Metropolitan Government of Nashville*, 478 F. Supp. 9 (M.D. Tenn. 1979), *Edwards* v. *Maryland State Fair*, 476 F. Supp. 153 (D. Md. 1979); *ISKCON* v. *Heffron*, No. 421843 (Dist. Ct. 2d Jud. Dist. Minn., August 18, 1980); *ISKCON* v. *Evans*, 440 F. Supp. 414 (S.D. Ohio 1977).

The primary purpose of a fairgrounds was well-summarized in *ISKCON* v. *Evans*, *supra*, where the court stated:

> Finally, the speaking which is to be regulated would take place on fairgrounds whose primary purpose for the duration of the fair is to house an agricultural and industrial exposition and to support educational and competitive junior activities. At this time the fairgrounds are not on a

> constitutional plane with an open-air park or street corner "immemorially . . . held in trust for the use of the public, and, time out of mind, . . . used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague* v. *Committee for Industrial Organization*, 307 U.S. 495, 515, 59 S.Ct. 954, 964 83 L.Ed. 1423 (1939). Nor can a strong parallel be drawn between the Ohio State Fair and a facility in which the intercommunication of ideas is an important aspect of the process to which the facility is dedicated. See generally *Tinker* v. *Des Moines Independent Community School District*, supra.

440 F. Supp. at 425. In the view of one court, a fair is "by definition a congeries of hawkers . . . ." *ISKCON* v. *State Fair of Texas*, 461 F. Supp. 719, 721 (N.D. Tex. 1978). It is for precisely this reason that a booth rule is a reasonable time, place and manner regulation for a fairgrounds, as the courts below and in the Tennessee State Fair case, *supra*, recognized. The Second District, in upholding the Minnesota State Fair Booth Rule, stated that:

> In Minnesota there are over 1400 exhibitors at the State Fair seeking to communicate various information. Some form of time, place and manner restriction is clearly required if the free speech rights of each of these exhibitors are to be protected. In addition the public has a right of access to the several communications which must be protected as well.

ISKCON v. *Heffron*, No. 421843 (2d Dist. Minn. August 18, 1979), slip. op. at 4. Similarly, the court in *Hynes* v. *Metropolitan Government of Nashville and Davidson County*, 478 F. Supp. 9, 11-12 (M.D. Tenn. 1979) stated that:

> The compelling state purpose underlying the limitation of exhibitors' activities is to permit any exhibitors or solicitor the opportunity to exercise the privilege freely without interruption or infringement by others seeking to exercise the same privilege. If plaintiffs were permitted roving solicitation then every exhibitor would be entitled to do the same. It is conceivable that confrontations could occur in which several or all of the ten other religious groups would vie for the ear and attention of the same fair patron. The ensuing babel would not only be chaotic and destructive of

> good order, but would also deny to each exhibitor the meaningful exercise of its First Amendment rights.

Id. at 11. In *State Fair of Texas* the court concluded that ISKCON devotees could be confined to a booth, if they " . . . go [about] in disguise and 'give away' flowers with no distribution of literature or disclosure of purpose . . . ." 461 F. Supp. at 724. The record in *Barber* amply demonstrates that ISKCON devotees habitually do just as the court feared in *State Fair of Texas.* A21, A31. It also shows, A32, that they habitually engage in the very conduct from which they have purportedly agreed to refrain in the Indiana, Maryland and Texas State Fair cases. *See Edwards* v. *Maryland State Fair,* 628 F.2d at 285, n.2; *ISKCON* v. *Bowen,* 600 F.2d at 669; *ISKCON* v. *State Fair of Texas,* ____ F. Supp. ____, ____ (N.D. Tex. 1980); As demonstrated below, these are among the many significant reasons why the State Fair Booth Rule is a reasonable and appropriate regulation of the time, place and manner of the Krishnas' access to this particular non-traditional forum.

B. The Booth Rule is a Nondisciminatory Regulation of Time, Place and Manner, and not of Content.

The State of New York respectfully submits that the State Fair Booth Rule is a nondiscriminatory regulation of time, place and manner, and not of content. The "Time, Place and Manner" analysis of claims of access to the public forum builds upon the belief-conduct dichotomy embraced when the public forum cases first began to come to this Court. *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940), which was both a free expression and a free exercise case, contains the oft-quoted observation that:

> . . . the Amendment embraces two concepts, freedom to believe and freedom to act. The first is absolute but in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.
>
> It is equally clear that a State may by general and nondiscriminatory legislation regulate the times, the places and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safe-

> guard the peace, good order and comfort of the community, without unconstitutionally invading in liberties protected by the Fourteenth Amendment.

Id. at 303-04, 304. Addressing itself specifically to the issue of solicitation, the Court in *Cantwell* went on to say:

> The State is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience.
>
> The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissable barrier to the exercise.

Id. at 306-07, 305. The line of cases for which *Cantwell* stands can be summarized as follows:

> In general it may be said that the state may place reasonable time, place or manner restrictions on speech that takes place in the public forum, but these regulations must be implemented without regard to the content of the speech.

Nowak at 812. Every State Fair Booth Rule challenged by ISKCON meets this test. As indicated above, such a rule does not prohibit the Krishnas from having access to the Fairgrounds; it is regulation, not prohibition. Furthermore, it is regulation of *conduct* and not of *content*. It governs the way in which ISKCON devotees and all others may exercise their First Amendment right of access to this particular forum.

C. The Booth Rule is Justified by a Number of Significant Governmental Interests.

The State of New York respectfully submits that the State Fair Booth Rule is a reasonable time, place and manner regulation of the Krishnas' conduct, and does not violate their First Amendment right of expression, because it is justified by a number of significant governmental interests.

The standard for judicial review of a time, place and manner regulation for such a non-traditional public forum as a State Fairgrounds, when challenged on the basis that it infringes upon the right of free expression, has not been addressed by this Court. In the absence of authoritative instruction from the Court, some of the ISKCON fairground cases have required a "compelling" governmental interest, *e.g.*, *Edwards* v. *Maryland State Fair*, 628 F. 2d at 286, while others have required that an "important" or "substantial" interest be shown, *e.g.*, *ISKCON* v. *Evans*, 440 F. Supp. at 421 ("important" interest required); *Edwards* v. *Maryland State Fair*, 476 F. Supp. at 161 ("substantial" interest required).

Justice Benjamin Cardozo once remarked, in another context, that " . . . [A] great principle of constitutional law is not susceptible of comprehensive statement in an adjective." *Carter* v. *Carter Coal Co.* 298 U.S. 238, 327 (1936). His point is well taken. A case of this importance does not turn on an adjective. If one must be selected, however, the State of New York submits that the appropriate choice is "significant," the term used by this Court in *Grayned* v. *Rockford*, 408 U.S. 104 (1972). *Grayned* involved the regulation of First Amendment expressive conduct at a non-traditional public forum, a public school. This Court reiterated that the crucial question in such a setting was "whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time," and indicated that reasonable time, place and manner regulations "may be necessary to further *significant governmental interests*, and are permitted." 408 U.S. at 115 (Emphasis added.) "Significant" would plainly be more appropriate than "compelling," which suggests an extraordinarily stringent standard of review, *see* Nowak at 535, and which has never been employed by this Court in the time, place and manner context.

1. **The Prevention of a Pervasive Pattern of Fraud and Abuse, Typical of Krishna Solicitors and Uncontrollable by Other Means, is a Significant Governmental Interest Which Justifies a State Fair Booth Rule.**

The State of New York respectfully submits that the prevention of a pervasive pattern of fraud and abuse, typical of Krishna solicitors and uncontrollable by other means, is a significant governmental interest which justifies a State Fair Booth Rule.

a. **The Sankirtan Solicitation Practices of ISKCON: The Appearance and the Actuality.**

Whatever its antecedents and the connotations of "Sankirtan" elsewhere, the "modern version of Sankirtan," as the New York district court explained in *Barber*, consists of the distribution of literature and solicitation of funds, in ordinary Western attire, by Krishna devotees given standard classroom and on-the-job training at the various temples throughout the country. A14, A22.[6]

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[6] Although ISKCON externally refers to this activity as "Sankirtan" and claims that it is obligatory for devotees, internally it is referred to as "Book Distribution" a term which is much more accurate. Indeed, A.C. Bhaktivedanta Swami Prabhupada, the founder of ISKCON, has written "[i]n our Krsna [Krishna] consciousness movement, all our activities are concentrated on book distribution . . . all our activities are concentrated upon distributing Krsna [Krishna] literature. This is very important." *Preaching Is The Essence* 30 (1977). *See also id.* 93-95.

Despite the Krishnas representations to the contrary, and the stipulated facts in a number of the State Fair cases, the practice of Sankirtan as herein defined is *not obligatory* for ISKCON devotees. On the contrary, the court found as fact in *Barber* that such solicitation is not required of all devotees, A21, particularly those at ISKCON farms, few of whom ever engage in Sankirtan. It is even true of urban temples, such as the New York City temple, which has 600-1,000 members, 190 of whom live at the temple. The outside members never engage in

(footnote cont'd.)

ISKCON's litigation strategy, mentioned above, is employed to facilitate the practice of this form of Sankirtan at state, county and local fairs. Although the opening date for the fair is established well in advance, the ISKCON strategy is to hit unsuspecting defense counsel with an application for equitable relief; usually in Federal court, on the very eve of the fair. The district court in *Edwards* v. *Maryland State Fair and Agriculture Society*, 476 F.Supp. 153, 160 (D. Md. 1979), spoke of ISKCON's "impressive track record" in such litigation; however, a large part of this seemingly impressive track record is comprised of decisions on application for a temporary restraining order or preliminary injunction. An articulate ISKCON spokesman, experienced at testifying, takes the stand, with shaved head and flowing saffron garb, and describes the Krishnas' position. Defense counsel lacks the time and prior experience with the Krishnas to cross-examine the witness effectively. Under the circumstances, he has little or no ability to obtain countervailing proof. It is small wonder, then, that ISKCON has often obtained the interim injunctive relief which it has sought.[7]

Sankirtan, and only about 25 of the temple residents participate. A22. Against this type of factual record it can hardly be said, as the courts did in *ISKCON* v. *Bowen*, 456 F. Supp. at 439, and *Edwards* v. *Maryland State Fair*, 476 F. Supp. at 155, that Sankirtan is central to Krishna belief or obligatory for devotees, nor should a court assume such facts even as it admits that there is "no evidence" to prove them, *see ISKCON* v. *Evans*, 440 F. Supp. at 417.

[7] ISKCON has obtained such interim relief on many occassions, *e.g.*, *ISKCON* v. *Colorado State Fair and Exposition Commission*, 610 P.2d 486 (Colo. 1980); *ISKCON* v. *Carey et al.*, No. 77-CV-328 (N.D.N.Y. August 31, 1979); *ISKCON* v. *Kearns*, 454 F. Supp. 116 (E.D. La. 1978); *ISKCON* v. *Carey et al.*, No. 77-CV-328 (N.D.N.Y. August 25, 1978); *IKSCON* v. *Bowen*, 456 F. Supp. 437 (S.D. Ind. 1977); *ISKCON* v. *Carey et al.*, No. 77-CV-328 (N.D.N.Y. August 30, 1977). However, ISKCON's failure to obtain such relief is by no means rare, *e.g.*,

(footnote cont'd.)

This "Eleventh Hour Blitzkrieg" was used for three years running in *Barber*, A5-7. It has been used in other cases as well, with the Krishnas filing their complaint and demand for a temporary restraining order on the eve of, or after commencement of, the fair in question, *e.g.*, *Edwards* v. *Maryland State Fair*, 476 F. Supp. 153, 154-55 (D. Md. 1979), *ISKCON* v. *Central Washington Fair Association*, No. 77-2-01447-1 (Super. Ct. Yakima County Wash., October 4, 1977), even when they were informed well in advance of the fair of the authorities' position that the Booth Rule must be abided by, *e.g.*, *ISKCON* v. *Evans*, 440 F. Supp. 414, 417 (S.D. Ohio 1977), *ISKCON* v. *Central Washington Fair Association*, slip op. at 3. Indeed this eleventh hour tactic was apparently utilized even in the instant case, *see ISKCON* v. *Heffron*, 299 N.W.2d 79, 82 (Minn. 1980).

The next level of controversy is on motion or cross-motions for summary judgment. The supporting and opposing evidence is documentary; a "paper" case is made. Almost invariably some or all of the critical facts are stipulated,[8] a procedure by

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Hynes v. *Metropolitan Government of Nashville*, 478 F. Supp. 9 (M.D. Tenn. 1979); *Edwards* v. *Maryland State Fair*, 476 F. Supp. 153 (D. Md. 1979); *ISKCON* v. *McAvey*, 450 F. Supp. 1265 (S.D.N.Y. 1978). In at least one instance ISKCON's deliberate use of its eleventh-hour tactics caused the court, in the exercise of equitable discretion, to deny preliminary relief. *ISKCON* v. *Central Washington Fair Assoc.*, No. 77-2-01447-1 (Super Ct. Yakima County Washington, October 4, 1977), *aff'd*, No. 2575-III (Ct. App. Wash. Div. III, October 6, 1977).

[8] As a sampling of such stipulations, consider the following examples. *ISKCON* v. *Heffron*, the instant case, involved the stipulation that *Sankirtan* included solicitation of funds. *ISKCON* v. *Bowen*, 456 F. Supp. 437 (S.D. Ind. 1977), involved *inter alia*, stipulations that *Sankirtan* includes the solicitation of funds, *id.* at 439, and that it is obligatory for all devotees, *id.* In *ISKCON* v. *Evans*, 440 F. Supp. 414 (S.D. Ohio 1977), the court *assumed* that Krishna devotees are encouraged to act peacefully while soliciting, *id.* at 417, a conclusion which the *Barber* record belies; the court further assumed that *Sankirtan*

(footnote cont'd.)

which ISKCON's self-serving assertions are validated rather than being put to the test. The difference made by a plenary trial is striking. For the first time in *Barber*, a trial court had a complete record showing the divergence between the Krishnas' self-serving assertions and stipulations and the actuality of how they carry on distribution and solicitation. The result was the court's conclusion that the New York State Fair Booth Rule was justified as a means of preventing continuation of the Krishnas' "widespread and systematic scheme of accosting, deceit, misrepresentation and fraud on the public . . . ." A43.

The pervasive pattern of fraud and abuse found in *Barber* is typical of Krishna solicitors throughout the country, which should come as no surprise, since the instructions which they are given and the manner in which they are carried out "are the same from temple to temple." A22. During classroom instructions devotees are "psyched" up for their solicitation duties, encouraged to be aggressive and to try to get as much money as possible. They are told that the best way to please their spiritual master is by doing such duties well, a statement which holds special significance, because spiritual masters hold great power over devotees. If a devotee is told by a spiritual master that a snake is a stick and to pick it up, he is to comply. *Id.*

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included fundraising even though the court saw "no evidence" of same, *id.* These cases were decided entirely upon stipulated facts. *ISKCON* v. *Heffron; ISKCON* v. *Bowen, supra; ISKCON* v. *Colorado State Fair and Exposition Commission*, 610 F.2d 486 (Colo. 1980). These cases were decided at least partly upon stipulations and without plenary trials: *ISKCON* v. *State Fair of Texas*, No. CA-3-78-1279-G (N.D. Texas, July 30, 1980); *Hynes* v. *Metropolitan Government of Nashville*, 478 F. Supp. 9 (M.D. Tenn. 1979); *Liberman* v. *Schesventer*, 447 F. Supp. 1355 (M.D. Fla. 1978).

Creativity in soliciting is also encouraged. Devotees are told to figure out ways to get the "karmi"[9] to donate more money. At Christmas time, for example, the most common Krishna ploy is to dress up as Santa Claus and give out candy canes while soliciting contributions. *Id.*

More specific instructions are given during on-the-job training, when new Sankirtan devotees are sent out with senior devotees whom the temple leaders consider to be experienced at Krishna methods of solicitation. *Id.* During the trial in *Barber*, an ex-devotee described, in sworn testimony, her education in Sankirtan solicitation practices, received at the hand of two of the best female solicitors for the Baltimore temple. Her teachers were characterized by ISKCON's own trial counsel in *Barber* as "crooks," A26, and with good reason, considering the court's description of the "lessons" which they imparted to their pupil.

She was instructed not to wear an identification badge and, if possible, to avoid affiliating herself with the Krishnas. If a potential donor asked her affiliation, she was to try to confuse him by slurring the word "Krishna" into sounding like the word "Christian." She was also instructed to make up "purposes" for requesting donations, such as worldwide education, food distribution programs or children's drug programs. She was further told that it was all right not to ask people's permission before pinning a button or artificial flower on them. Potential donors were informed that the musical stars mentioned on the

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[9] All non-Krishnas are regarded as "misguided souls," and are referred to variously as "karmi," "demons," "dogs" and "children." It is not important that such persons understand the "meaning" of their contribution, be engaged in a religious discussion about Lord Krishna, or even be able to recognize the religious identity of the devotee. A21-22. What this means in ordinary terms, of course, is that it is all right for the Krishnas to lie to the misguided souls to obtain a contribution. *E.g.*, A22-23.

back of the albums used during solicitation actually performed on the albums. The devotees would only rarely discuss religion with a prospective contributor, since religious discussions were considered a nuisance, especially when devotees solicited at places with a lot of people, because such conversations would cut down on the amount of soliciting that could be done. A22-23.

Other techniques for increasing monetary contributions included:

> . . . flirting with males, attempting to get people to donate larger bills, intentionally miscounting change, folding over bills to shortchange people, and holding large bills for a long time in an effort to make the donor tired of the idea of getting the desired amount of change back. The junior devotee was told that it was all right to lie to security personnel in order to obtain the right to solicit at an airport, and to enter private premises to solicit without permission. She was taught to target people such as navy men as easy marks. Once her instructor took her to a nearby naval base on its monthly pay day. Apparently, the Krishna instructor's secret ambition was to get a serviceman to "donate" his entire monthly pay check to the Krishnas. A23.

When asked whether the incidents which she had described were isolated events, perpetrated by overzealous devotees, the former pupil replied that "It was their normal enthusiasm, they had done it for a long time." A23.[10] The record in *Barber*

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[10] The ex-devotee's description of how Sankirtan solicitation is actually carried on by the Baltimore temple contrasts sharply with the purported instructions to solicitors cited in *Edwards* v. *Maryland State Fair*, 628 F.2d 284, n.1.

It is also interesting to note that one of the named individual plaintiffs in *Edwards* is Raymond Kissane, the devotee whose pervasive misconduct from New York to North Carolina is summarized by the court in *Barber*. A25. The *Edwards* court conceded that its decree might require modification if a marked change in circumstances should occur. *Id.* at 287. If Mr. Kissane remains true to form, the change should not be long in coming. The court will then have some very real and not just "possible horribles," *id.* at 286 against which to judge the reasonableness of Maryland's booth rule.

confirms that, indeed, the incidents described were not isolated or speculative, nor were they the acts of a "small handful of 'immature' or 'inexperienced' devotees," A23, A24, A26, A45, to borrow a favorite ISKCON refrain. A15-16, A24. Quite the opposite; her testimony was, almost without exception, a reliable index of the different soliciting methods habitually employed by the Krishnas. A23-24. These methods add up to a pattern of deceptive practices, identical in nature, carried on at the New York State Fair, in the Syracuse community, and at Fairs and other locations throughout the multi-state area from New York and Massachusetts through Maryland and North Carolina. A24-32, A43-45. This "widespread and systematic scheme of accosting, deceit, misrepresentation, and fraud on the public . . . ." A43, was deliberately permitted, A26, and condoned, A43, by ISKCON, which uses "experienced 'thieves' to teach its newer members how to solicit money from the public in exactly the same way." A43. The instant case and other State Fair cases, such as *ISKCON* v. *State Fair of Texas*, 461 F. Supp. at 720-21, 724 and *Edwards* v. *Maryland State Fair*, *supra* at 285, n.2, have reported the same findings, although the quantum of proof has been less, since no plenary trial was held in any of those cases.

The Sankirtan solicitation of Krishna devotees is a practice "rife with potential fraud," as the court recognized in the *Texas State Fair case*, 461 F. Supp. at 723. The instant case, *Barber*, and State Fair cases throughout the country demonstrate that the potentiality – unfortunately, but inevitably – will be realized unless the Krishnas are required to confine their solicitation of funds to a booth. Obliging them to do so, as the dissenting opinion below states, is a reasonable way of protecting Minnesota State Fair patrons from fraud, misrepresentation and other acts of misconduct. 299 N.W.2d at 87 (dissenting opinion).

b. The Pervasive Pattern of Fraud and Abuse Which is Typical of Krishna Solicitors is Uncontrollable by Means other than a State Fair Booth Rule.

The State of New York respectfully submits that the pervasive pattern of fraud and abuse which is typical of Krishna solicitors is uncontrollable by means other than a State Fair Booth Rule. As a supposedly "less restrictive alternative" to such a rule, ISKCON routinely proposes the use of penal sanctions against individual devotees guilty of fraud or assault while soliciting, or the issuance of a "counter-injunction," imposing identification and registration requirements, setting forth when and where solicitation may occur, and forbidding such conduct as touching any fairgoer without his permission. *See, e.g., Edwards* v. *Maryland State Fair*, 628 F.2d 282, 286, n.2 (4th Cir. 1980); *ISKCON* v. *Bowen*, 600 F.2d 667, 669 (7th Cir. 1979); *ISKCON* v. *State Fair of Texas*, CA-3-78-1279-G, ____ F. Supp. ____ (N.T. Tex. July 30, 1980). The courts which have adopted the Krishnas' proposals, operating without the proof of their "systematic, symptomatic and patternistic" misconduct which was shown in *Barber*, A45, are in for a rude awakening. The use of penal sanctions is not practicable in the State Fair context, and the counter-injunctions so highly touted by ISKCON are a futile exercise.

The use of penal sanctions, although frequently suggested by this Court and other courts as a less restrictive means of accomplishing the state's objectives, is not practicable in the State Fair context. The Krishnas' "widespread fraud," A43, "cannot be effectively checked by the criminal justice system," A43, as the court in *Barber* and the dissent below recognized *ISKCON* v. *Heffron*, 299 N.W.2d at 88. Fairgoers come from across the state and the nation, "to enjoy themselves, and not to file criminal complaints, or to return some months in the future to appear as witnesses." A45. To expect them to do so would be to "ignore the realities of human behavior," *ISKCON* v. *Griffin*, 437 F. Supp. 666, 673 (W.D. Pa. 1979), and thus to

rely upon an alternative which is appealing in theory but unworkable in practice. The situation is compounded by the difficulty in policing a crowded fairground, and the "hit-and-run" nature of Krishna solicitors who fleece or assault fairgoers and disappear into the crowd. A30-31, A45.

The State Fair context, therefore, is clearly distinguishable from others in which this Court has relied upon penal sanctions as a less restrictive alternative incumbent upon the state. For example, in *Schaumberg* v. *Citizens for a Better Environment*, 444 U.S. 620 (1980), the Court indicated that fraud could better be dealt with on a case-by-case criminal prosecution basis, *id.* at 639. In *Schaumberg*, however, the municipality was concerned with door-to-door solicitation and the victim of any fraud could no doubt file his complaint and give any necessary testimony in or near his home town, which is not the case for most fairgoers.[11]

The counter-injunctions, so highly touted by ISKCON, and proposed to allay the courts' qualms about the devotees' conduct during roving Sankirtan, are nothing more than a futile exercise. Indeed, as the court recognized in *Barber*, prior use of such conditions by governmental officials, including fair authorities, and by the courts, has "facilitated the Krishnas in perpetuating their illicit acts." A43. The reason is not far to seek, although it is ironic. The terms and conditions which ISKCON continues to propose to the courts as a less restrictive

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[11] *Schaumberg* is also distinguishable in the nature of the challenged restriction; there, the group which wished to solicit but which did not meet the municipality's requirements was totally precluded from doing so. Under the Booth Rule solicitation is permitted but is restricted to a fixed site on the Fairgrounds. The same factor distinguishes *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940), and *Schneider* v. *New Jersey*, 308 U.S. 147 (1939), both of which involved restrictions more akin to a total ban on First Amendment-protected activity rather than a reasonable time, place and manner restriction such as the Booth Rule.

alternative to the Booth Rule are the very ones to which it has agreed with defendants around the country, and then violated "with unabashed arrogance." A44.

The experience at the New York State Fair is instructive. The stipulations which the court imposed upon the Krishnas' solicitation at the 1978 and 1979 Fairs were "flagrantly violated." A32. ISKCON and its devotees failed to

> register devotee identities, engage in solicitation in a peaceable manner and without harassment to the public, ask fairgoers' permission before touching them, honor the requirement that they not solicit within 10 feet from an exhibition or booth, or solicit fairgoers sitting on a bench or waiting in line. A32.

The court found several other persistent violations of its orders[12] and noted that the same type difficulties had occurred with the same devotees at other Fairs which they had attended, where they repeatedly violated conditions which they had stipulated to observe. A29, A30, A32. The experience in the instant case has been the same. *ISKCON* v. *Heffron*, 299 N.W. 2d at 87-88. Whatever the superficial attractiveness of the Krishnas' proffered alternatives, the State of New York respectfully submits that, in the real world of time, place and manner regulation of their access to a State Fairgrounds, there is no means other than a Booth Rule to control their pervasive pattern of fraud and abuse.

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12 It should give this Court some insight into the Krishnas' attitude toward such court orders to note that they simply refused to comply with a discovery order issued by Judge Munson relating to their financial records. A19-20. ISKCON provided only a part of the information requested, and even that was conceded by their own treasurer to be inaccurate, A29; no excuse has been offered for the Krishnas' flouting of Judge Munson's order.

A STATE FAIR BOOTH RULE IS A REASONABLE TIME, PLACE AND MANNER REGULATION WHICH DOES NOT VIOLATE ISKCON'S RIGHT TO THE FREE EXERCISE OF RELIGION.

The State of New York respectfully submits that a State Fair Booth Rule is a reasonable time, place and manner regulation which does not violate ISKCON's right to the free exercise of religion. Any burden which may be placed upon the Krishnas' conduct is incidental to and no greater than is necessary to foster the significant governmental interests already noted.

The free exercise claim can be treated briefly for two reasons. One is that many of the points already made about time, place and manner regulation, and less restrictive alternatives apply with equal force to ISKCON's free exercise claim. Another is that there appears to be little if any difference between the free expression and free exercise claims in a case like this, as the court recognized in *ISKCON* v. *Evans*, 440 F. Supp. at 421, 425. See also Gunther at 1581 and Nowak at 871-79.

There is no substantial burden on the Krishnas' free exercise of their religion, for the reason that the Minnesota State Fair is regulating *conduct*, and, indeed, conduct which is not obligatory for ISKCON devotees. As the court found in *Barber*, what ISKCON calls "Sankirtan" externally and "Book Distribution" internally, is not obligatory. A21-22. As the court observed in *Edwards* v. *Maryland State Fair*, 476 F. Supp. at 165, it is but one manifestation of ISKCON's religious practice, and is by no means claimed to be a central aspect of worship.

Finally, even if the State Fair Booth Rule places a burden on the Krishnas' conduct, the burden is incidental to and no greater than necessary to foster the many significant governmental interests discussed in this *amicus curiae* brief.

III

CONCLUSION

In the courtroom and in the media ISKCON sounds the refrain that the fraud and abuse which occur during Sankirtan are isolated instances attributable to the immaturity, inexperience or excessive enthusiasm of a few devotees, which makes them come on too strong. Nothing could be further from the truth. "Coming on too strong", as the *Barber* court found, is simply part of the Krishnas' "widespread and systematic scheme of accosting, deceit, misrepresentation, and fraud on the public in their Sankirtan activities." A43. ISKCON's claim to the contrary is "absolutely untrue." A24.

For the above-stated reasons, the State of New York respectfully submits that the Minnesota State Fair Booth Rule is a reasonable, nondiscriminatory regulation of time, place and manner, and not of content, which is justified by a number of significant governmental interests, including the prevention of a pervasive pattern of fraud and abuse, typical of Krishna solicitors, and which is uncontrollable by means other than the Booth Rule. The decision of the Minnesota Supreme Court should therefore be reversed, and the complaint herein dismissed.

Respectfully submitted,

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APPENDIX

APPENDIX A — Memorandum-Decision and Order of Munson, J., dated August 25, 1980.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., AND, ON BEHALF OF THEMSELVES AND ALL INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS MEMBERS, AND ALAN ATTIAS, A/K/A AJA DASA, AND KENNETH L. SOLOMON, A/K/A KESIHANTA, *Plaintiffs,*

— *vs.* —

J. ROGER BARBER, in his official capacity as Commissioner of the DEPARTMENT OF AGRICULTURE AND MARKETS OF THE STATE OF NEW YORK, and THOMAS G. YOUNG, Director of the New York State Industrial Exhibit Authority, and JAMES G. GARLICK, Acting Director of the New York State Industrial Exhibit Authority, *Defendants.*

77-CV-328

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APPENDIX A — Memorandum-Decision and Order of Munson, J., dated August 25, 1980.

HOWARD G. MUNSON, C.J.

MEMORANDUM-DECISION AND ORDER.

I.

The First Amendment is dedicated to the proposition that a citizen's right to form, hold, or express opinions or beliefs is entitled to an accommodation from the government whenever possible. This principle embodies certain fundamental social decisions about the type of society that would be created as a result. One such decision concerns our society's attitude towards its discordant voices. Every society seeks, to varying degrees, to manage the forces of social unrest within its borders. The First Amendment envisions a system by which social order can be achieved by channeling this unrest through self-expression, rather than by trying to suppress individuals who espouse ideas that are unpalatable to the majority of the citizenry.

As a practical corollary, however, there will be times when this accommodation will favor society's interest in protecting itself as a whole. For instance, if spoken in a particular setting or at certain times, the message of a speech may be so dangerous that it ought to be regulated or even prohibited for the good of all citizens. Society cannot tolerate a person yelling "fire" in a crowded theater when there is no fire. At the same time, there will be occasions where the manner in which speech is presented may require regulation for the greater good of society. Thus, a prohibitory rule is appropriate to guard against the con man who would have the unwary believe that he solicits for the benefit of both widow and orphan when, in reality, he desires only to improve his own treasury.

These examples enjoy the benefit of being clear cut. In the typical situation, however, it is harder to determine where the rights of one group should end and where the rights of another

should begin. Frequently, courts are required to evaluate whether, in balancing the rights of individuals, governmental entities have reached a constitutionally permissible result. In the course of exercising this responsibility in the past, courts have often strained to reach judgments, have arrived at opposite conclusions, and have covered their tracks, in the words of Supreme Court Justice Jackson, with the "pronouncement of general propositions with which there is no disagreement."[1]

In the view of one noted legal commentator,[2] though clearly formulated rules in this area are essential, the courts' difficulties in the First Amendment arena are understandable. Says he, our system of free expression contemplates that "[t]he members of society must be willing to sacrifice individual and short-term advantage for social and long-range goals." Continuing on, he states: "[y]et, because [this system] recognizes the right of the citizen to disagree with, arouse, antagonize, and shock his fellow citizens and the government, such an arrangement of human affairs is hardly likely to be automatically achieved."[3]

While the Court agrees with the latter proposition, it cannot accept the former as being correct. In the same opinion, partially quoted from above, Justice Jackson said: "[c]ivil liberties had their origin and must find their ultimate guaranty in the faith of the people."[4] There is a "good faith" limit to the number of times that the majority of society can be asked to forsake their liberties in favor of some small group which claims that their beliefs or opinions compel this result. Hence, exceptions such as these must be very narrowly drawn, and should reflect our common sense and fundamental values. In the past, all too often judgments in this field have not; and they have substituted a certain transcendental consciousness of their own for practical solutions.

Such a judicial legacy will not only fall of its own weight, it will make it more difficult for communities to find practical solutions to constitutional problems. The ultimate danger in

this course is clear. Soon, a society's long-range social goals will become casualties of short-sighted convenience, and the people will lose faith in the meaning of their liberties. Moreover, the end will have been hastened by a willingness of courts to replace common sense and values with outmoded legal theories, whose combined effect is to grant selected minorities the license to write their own code of conduct at the expense of the rights of others. While questions of free expression or religion commonly require the courts to seek practical solutions, we need not reach judgments as did Plato's men, who were chained in a cave and only able to see their shadows. There may come a time when a minority group seeks constitutional favoritism that in common sense terms is neither justified, nor is in the interests of society as a whole. At such times, this Court is duty bound to reject such a request. By way of concluding these remarks, again the words of Justice Jackson:

> The First Amendment grew out of an experience which taught that society cannot trust the conscience of a majority to keep its religious zeal within the limits that a free society can tolerate. I do not think it any more intended to leave the conscience of a minority to fix its limits. Civil government can not let any group ride roughshod over others simply because their "consciences" tell them to do so.[5]

This action began with the International Society for Krishna Consciousness (hereinafter referred to as Krishnas) and one of its members, Alan Attias, filed a complaint in the Northern District of New York on August 29, 1977, the day before the 1977 New York State Fair was to begin. The Krishnas are a duly organized not-for-profit corporation, incorporated under the laws of the State of New York, with their main branch located in New York City, and with various temples located throughout the United States and the world. As originally joined, the defendants in this action were Hugh L. Carey, sued individually and as Governor of the State of New York; J. Roger Barber,

sued individually and as Director of the New York State Department of Agriculture and Markets; and Thomas G. Young, sued individually and as Director of the New York State Fair.

The gravamen of the plaintiffs' 1977 complaint was that the New York State Fair's booth regulation prohibited the Krishnas from freely circulating at the Fairgrounds, and practicing a Krishna ritual known as Sankirtan. According to Krishna custom, Sankirtan requires that a devotee proselytize the Krishna religion and solicit monies for its support. The booth restriction, said plaintiffs, violated the Krishnas' First and Fourteenth Amendment rights of free speech, free exercise of religion and peaceable assembly. In their prayer for relief, the Krishnas sought a temporary restraining order preventing defendants from refusing the Krishnas unlimited access to the Fairgrounds. This order was subsequently granted by the Honorable Edmund Port, Senior Judge of this District, on August 30, 1977. Prior to the filing of the complaint, the New York State Fair had not yet formally reduced its booth regulations to writing. However, such regulations were drawn up and printed after this suit was commenced. It should also be noted that the State Fair is a cooperative enterprise between two public agencies. One is the Division of the State Fair of the State Department of Agriculture and Markets, and the other is the New York State Industrial Exhibit Authority. Both agencies are involved in this action because each has rule-making authority which plaintiffs contest.

Although the 1977 complaint was never dismissed, one day before the 1978 New York State Fair was scheduled to begin, the Krishnas and Krishna devotee Nicholas D'Angelo filed a second complaint, seeking another temporary restraining order to enjoin the defendants from enforcing the booth requirement at the 1978 State Fair. This Court heard oral argument on August 28, 1978, and granted plaintiffs' relief effective through September 1, 1978, which allowed plaintiffs access to the Fairgrounds subject to some twenty-one conditions which were

standard stipulations that plaintiffs propose to courts and various defendants in this type of litigation around the country. In general, the restrictions relate to the type of activity in which devotees engage; registration and liason procedures; fees and the manner and place of the activity. The order was subsequently extended for the duration of the Fair, and it was partially modified to exclude the Krishnas from the building known as the Cow Barn.

On January 12, 1979, defendants filed their answer to the 1977 complaint. Thereafter, by notice of motion dated July 20, 1979, plaintiffs moved for summary judgment, and oral argument was heard on July 30, 1979. The Court eventually denied the motion, believing that a full trial of the issue was necessary. On August 28, 1979, Judge Port signed still another temporary restraining order embodying the same twenty-one conditions as this Court's Order, and it was to be in effect until a motion for a preliminary injunction could be heard. Later that day the temporary restraining order was vacated until such time when all counsel could be present for a hearing on the preliminary injunction which was set for August 30. Between those dates, no Krishna was to enter the Fairgrounds to perform Sankirtan. One did, however, and was arrested, and later banished from the Fairgrounds by Judge Port. The temporary order was reinstated on August 30, and the Judge dictated his decision into the record the next day granting a preliminary injunction. Plaintiff subsequently moved for summary judgment on November 28, 1979, and this motion was held over by the parties on agreement that it would be renewed on April 21, 1980, which was the date set for trial on the merits.

The trial began as scheduled, plaintiffs renewed their motion for summary judgment, and it was denied. Other motions were also disposed of at that time. These included plaintiffs' motion to add Kenneth Solomon as a party and to dismiss the action as to Governor Carey, Commissioner Barber, and Fair Director

Young in their individual capacities. The trial lasted 11 days, 1500 pages of testimony was taken, and 44 witnesses were called by the parties. These included religious experts, a "de-programmed" Krishna, and a number of state and county fair officials from around the country. Before examining the facts in dispute, some further background on the State Fair will prove useful.

The New York State Fairgrounds are located in the Town of Geddes, just outside the City of Syracuse. The total area of the grounds, including the large parking lots outside the gates and the various open spaces is approximately 350 acres. (Garlick, pp. 129, 130). The area within the gates of the Fairgrounds comprises something less than 40 acres. This is the area housing all of the many structures as well as areas of pedestrian traffic, and the 40-acre figure includes the large grandstand area and the infield parking area. After deducting the acreage of the race track, grandstand, and the infield parking area, one is left with the Fairgrounds proper, a total of approximately 20 acres within which the actual exhibit and pedestrian walkways are found.

Attendance at the New York State Fair has increased steadily since 1977. That year, the duration of the Fair was seven days and the total attendance was approximate 526,000. In 1978, the duration of the Fair was increased to ten days, and the total attendance was approximately 686,000. In 1979, when the Fair was again ten days, total attendance was approximately 701,000.

The bulk of exhibitors at the New York State Fair represent the best examples of the fine agriculture and progressive industry found within the State of New York. Also included among the exhibitors are representatives of various religious, fraternal, or political groups which communicate their ideas to the public attending the Fair. Exhibitor space has consistently been rented to groups such as Right-to-Life, Planned Parenthood,

Seventh Day Adventists, Lutheran Laymen's League, the Knights of Columbus and many others. Many of these groups were soliciting contributions to help their cause and all were confined to booths during the course of the Fair. The Court turns now to an examination of the Krishna religion and the practice of Sankirtan.

II.

The International Society for Krishna Consciousness is a religious organization that traces the origins of its beliefs to the Vaishnava Tradition of Bhakti Hinduism, which was formalized in the ninth century, A.D., in southern India. The scriptural source of this Tradition are the ancient Vedic literatures. Included among these scriptures are the Samhita and the Upanishads, which are the canonical mainstays of the Vaishnava tradition, and the acceptance and belief in these scriptures are incumbent on authentic followers.

The Samhita and Upanishads are referred together as the Shruti, signifying that their contents were first heard by the sages, as revealed to them by the Lord. The other writings of the Tradition are called the Smriti, which are the commentaries on the Shruti. These are noncanonical or "secondary" texts, whose interpretations are not considered to be binding on the faithful. The more significant religious works studied by the Krishnas descend from the Smriti, such as the *Srimad Bhagavatam*, and the *Bhagavad-Gita*.

Although the Krishnas identify the roots of their beliefs as being centuries old, the organizational beginnings of their Society in this country are as recent as the mid-1960's, when the Spiritual Master A.C. Bhaktivedanta Swami came to this country from India at the behest of his Spiritual Master, and started a small temple in New York City. Bhaktivedanta Swami was eleventh in the chain of disciples of the Chaitanya movement of Bengal in northeastern India. The central figure in that

movement was the Sage Chaitanya who lived from 1486 to 1533, and was understood to be an incarnation of God or Krishna. It is said that Lord Chaitanya was able to unlock the message of God for the masses, and he proclaimed that one day his name would be chanted in every town and village in the whole world. The book describing his life, the *Sri Caitanya Caritamrta*, is considered part of the Krishna scriptures.

It would appear that as a result of Lord Chaitanya's proclamation, a fundamental responsibility of the modern Krishnas is to practice Sankirtan, a missionary type of practice, in which the Krishnas proselytize their faith and solicit contributions. In its present usage, however, the term Sankirtan describes a religious rite vastly different from its original meaning in the Vaishnava Tradition. In premodern times, the Hindus did not believe that their religions should be aggressively proselytized throughout the general population. Furthermore, although solicitation was conducted by the Hindus, it was not considered to be a part of Sankirtan, and it was not practiced by the more religious members of the Hindu orders. A further comparison of the traditional and present forms of Sankirtan will be useful.

The origins of Sankirtan date back to the ninth century, A.D., when it is first referred to in the *Srimad Bhagavatan*, at a time when the notion of personal devotion to the deity was beginning to evolve. It was next mentioned in the *Bhagavad-Gita* some five hundred years later, and was then practiced in the form of ritualized movements, accompanied by the repetitious chanting of God's name. The central purpose of Sankirtan was to get closer to God and involve others in such worship. Solicitation for support of the religion seemed equally ritualistic, and took two forms -- solicitation to guarantee survival, and solicitation to support the construction of edifices. In either case, solicitation was rarely performed by the monks or the initiated faithful. Rather, this chore was shouldered by lay specialists who functioned as managers of the religion.

When approaching potential donors, these specialists were required to depend on "true speech and gentle speech." Moreover, they were immediately to identify their religious order and guru. Money could not be asked for directly, instead, the specialist would ask only for a contribution of food sufficient in amount to fill the outstretched palms, or enough clothing to enable survival under a tree. It was this fact that money was not asked for directly which separated those who were religious beggars from those who were not. Also, in the course of asking for a contribution, a prospective donor could never be touched without their permission. If money was needed to build an edifice, an announcement to that effect was made in the community, and the lay followers and others, such as the Maharajas and kings, would be asked to contribute. To summarize, traditionally, the practice of Sankirtan was considered a pure religious ritual, and was set completely apart both in principle and practice from the necessity to solicit funds for the religious support.

As already mentioned, the modern Krishnas have expanded the role of proselytizing in the religion, and have incorporated the solicitation of money into the practice of Sankirtan. It should be noted, however, that they have not excluded from the definition of Sankirtan, the traditional dancing and chanting which is still practiced today, though it is not the subject of this litigation. Nevertheless, in the process of redefining Sankirtan, the theoretical underpinning appears to have shifted dramatically from its traditional sense. As presently conceived by the Krishnas, Sankirtan is the process of propagating the "truth" of Krishna. The Krishnas profess that nonbelievers in the Lord Krishna are misguided souls who are spiritually impure because they attempt to exploit the Lord's material wealth for their own personal gratification.

To achieve a spiritual rebirth, divine instruction and full surrender to the Lord is necessary. The surrender takes the form

of giving up material possessions to the Krishnas for use in the service of the Lord, and for the support of the religion. The more material objects a person gives up -- objects that are diverted from self-gratification towards the service of the Lord -- the more the soul becomes purified. The process of purification is said to take place as soon as the material transfer is made. As a consequence, it is not significant, according to the Krishnas, that an individual understand the purpose of the donation. As stated succinctly by the Krishnas in one of their publications, they believe that "[t]he consciousness of the majority of people in present societies (including American) necessitates their donation of money to the Lord, Sri Krishna's service, for their spiritual purification and to provide the required means to ISKON's sankirtan work." [Appendix A to Plaintiffs' Trial Brief at p. 1].

To be a devotee of Krishna means to totally surrender personal material possessions, to take up the Lord's service, and to attempt to get others to surrender as well. The materially conditioned souls, or karmi, are viewed as diseased patients who, with the proper spiritual administrations by the doctoring Krishna devotee, will be able to return to spiritual health. In practice, the process of administering to the misguided souls is conducted wherever such souls tend to congregate. Thus, Krishnas are "dispatched" in organized parties varying in numbers, and headed by a Sankirtan leader. The parties are sent to the streets, airports, bus terminals, expressway rest stops, shopping centers, parks, national monuments, naval bases, convention centers, football games, horse and auto race tracks, college campuses, and to state and county fairs. This list is certainly not all inclusive. While Sankirtan parties are usually dispatched from a Krishna temple to a predetermined location such as those just enumerated, the Sankirtan leader is given discretionary authority to spread the "truth" at whatever locale will enable the party to reach the maximum numbers of people.

There is, nonetheless, a territorial limit to a Sankirtan party's wanderings. Each Krishna temple or farm is assigned a specific territory, and before a Sankirtan party can cross over into another temple's territory, permission must be obtained beforehand. For instance, the plaintiff New York City temple has assigned to it that City, northern New Jersey and the southern most counties of New York State. Yet, with the permission of the respective temples, the New York City temple has dispatched Sankirtan parties to the Eastern States Exhibition in Massachusetts and even to North Carolina for the State Fair in Raleigh. As another example, to "cover" the New York State Fair, the Krishnas have dispatched Sankirtan parties from their farm in West Virginia, their temples in Boston, Buffalo, Pittsburgh, Philadelphia, and a national traveling Sankirtan party called Radha Damodar which was once "based" in Pennsylvania. A temple's territorial allocation is decided by the Krishnas' governing body commission, which consists of twenty-three men representing different "zones" of the world, and overseas matters common to the Society. The plaintiff New York City temple is located in a "zone" which includes the northeastern United States, Puerto Rico and the Caribbean. Over the years as the movement has become more popular, other temples have been founded, and the New York City temple, once the only temple in the United States, has, as a result, seen its assigned territory become smaller and smaller.

Thus far, the Court has discussed why Krishnas are sent among the public and where they are sent; the next question that must be examined is how are they sent, or the methods employed by the Krishnas in their practice of Sankirtan. A considerable amount of testimony on this issue has been presented by both parties, and it has given this Court the opportunity, unlike that of any other court in a case involving the right of the Krishnas to practice Sankirtan, to understand the various methods employed by the Krishnas when performing this religious rite. The plaintiffs' perspective on their Sankirtan methods will be discussed first. This discussion will conclude with

the Krishnas' view of their previous experiences at the New York State Fair, and the ways in which the State Fair's booth restriction would effect their ability to practice Sankirtan and exercise their constitutional rights.

From the Krishna point of view, in order to understand how they conduct Sankirtan, picture the following scenario which supposedly occurred frequently at the New York State Fair. A member of the Krishna faith approaches a fair goer, makes an introductory remark, and simultaneously offers a prasada, or some small "sanctified" item such as an artificial flower, or food stuff. The purpose of this offering is to divert the fair goer's attention and thus enable the Krishna devotee to engage the fair goer in a conversation about the Krishna faith. Other items have also been used in the course of this introductory exchange, for example, a stick of incense, candy canes, or buttons. These buttons display various messages on them like "Keep on Truckin", "I Love New York" or have portrayed two racing flags. When a flower or button is used, it is typically pinned on the fair goer's person.

If the fair goer desires to engage the Krishna in a conversation, the Krishna devotee will attempt to sell the interested fair goer a religious book such as the Srimad Bhagavatem, the Sri Caitanya Caritamrta, Bhagavad-Gita As It Is, as translated by A.C. Bhaktivedanta Swami, some other "small book" written by him; or a religious magazine called "Back to Godhead" which is published by the Krishnas; or a religious record produced and recorded by the Krishnas. These records contain religious songs and chanting, and the record jackets acknowledge the contributions made to Krishna "projects" by such recording stars as Bob Marley, Bob Dylan, Stevie Wonder, Alice Coltrane, George Harrison, Richie Havens, and Neil Diamond. Whether or not the fair goer decides to purchase one of these items, the Krishna devotee will ask the fair goer to make a

monetary donation. Even if the fair goer does not make a contribution, usually the Krishna devotee would permit the fair goer to keep the prasada or token, and sometimes even the more religious paraphernalia if it had been shown to the fair goer. In this manner, the Krishna devotee spreads the "truth" of Krishna by giving the misguided souls an opportunity to rededicate their material wealth; attempts to disseminate as many books, magazines, and records as possible and obtain donations in order that another copy of these religious works may be reproduced; and, in the end, hopes to induce others to join the Krishna faith.

To learn how to perform Sankirtan, Krishna devotees are schooled by their religious superiors. Certain standard instructions on how to approach the misguided souls are given to Sankirtan parties by the Krishna priests or Brahmanas. The Brahmanas are instructed in turn by their spiritual masters, who rely on the Krishna scriptures for guidance. The devotees are told to appreciate the philosophical reasoning behind the practice of Sankirtan and to understand the "power" of its meaning. Moreover, they are instructed that, although they should be diligent about the task, they should rely on the Lord for their success. The devotee is instructed to act ideally, truthfully, and not to irritate anyone or touch them without permission. For instance, devotees are admonished never to say that the recording stars actually participated in making the Krishna records. The Krishna devotees are told to inform the public that these stars have helped the Krishnas in a number of their "projects," but that the stars do not perform on these records. The Brahmanas tell the devotee to think practically; if they force themselves upon the misguided souls at a particular locale, a scene will result, and most likely the Krishnas would not be permitted to return. One Krishna Brahmana summarized the instructions as follows:

> Very specifically we stress the point that was spoken by a great saint in our movement, that is in this particular day and age, example is more important than precept. The particulars are that you must behave according to the philosophy that you are trying to preach, and the principles, the qualities a sainted person may be expected to have, thus, you have to be humble, tolerant when people get angry or yell at you or if the authorities do something you may not think right, still you abide by what they say, if someone says no, then you don't repeatedly push them. [Transcript, April 22, 1980 at p. 71]

It must also be remembered that at the New York State Fair, the Krishnas stipulated to a certain code of conduct, that affected the manner, place and time at which they were able to approach fair goers. Due to these stipulations,[6] the Krishnas were to wear identification badges and display them prominently, register with fair authorities, only engage in Sankirtan with those fair goers who agreed, not to touch anyone without their consent, and restrict their Sankirtan activities to certain places and appropriate times.

The Krishna plaintiffs concede that despite taking great care to make certain that devotees act according to the standard instructions and stipulations, there are some "unfortunate incidents" where Krishna devotees violate these principles and guidelines, and these violations may even lead to arrests of devotees. There were, in fact one arrest of a Krishna devotee at the 1977 State Fair, six arrests in 1978, and nine arrests in 1979. Moreover, there were many informal complaints by fair goers against the Krishnas in 1978 and 1979. It is vigorously urged by the Krishnas that "[t]hese violations, if indeed they rose to that level of harm, were not encouraged or even condoned by the Sankirtan leader at the Fair or by those who prepare devotees for proselytizing and soliciting." [Plaintiff's trial brief at p. 19]. In addition, the Krishnas say that if a devotee's conduct causes complaints, the devotee would be removed from Sankirtan duties. The Krishnas provide three

explanations for these statistics. According to one Krishna Brahmana, who testified at the trial, the origin of some of the complaints results from the inexperience of new Krishna devotees:

> Well, they are not very confident. They are making a very big transition to become a devotee of Hare Krishna, it is kind of almost like a shock; a new acceptance of authority so they are not very confident and the temple techniques they are not just in a good -- they are not as smooth with the people.
>
> If a person is nervous when he is approaching another person, then he will immediately make the other person nervous. I give the example to them when I am training them just like if you approach a dog, the dog will pick up if you are afraid of him and therefore the dog will become aggressive so a lot of the problems with newer devotees doing Sankirtan is that they are not as confident, not as experienced, so their lack of confidence and ability to do Sankirtan would be picked up by the people they are meeting and generally that may cause some complaint, some difficulties.
>
> One other point in that regard, that is actually an important part that as a devotee performs Sankirtan his ability to present whether it is a record or a book or just even meeting and talking to some one improves in terms of being able to actually explain the philosophy because as he, you know, performs his daily service day after day he understands it more and more so, for example, myself when I do Sankirtan I am able to speak with professionals and people and actually carry on a very nice conversation presenting the philosophy according to how they can appreciate whereas younger, a younger man, he can't do that so he relies more on the mechanics. [Transcript, May 7th, 1980 at pp. 65-67].

The Krishnas also assert that some of these "conflicts" are merely misunderstandings, and inevitable occurrences at events like the New York State Fair. First of all, say the Krishnas, the New York State Fair administration has not been very conciliatory towards the Krishnas for the last three years. They

claim that the surrounding circumstances of at least one of the 1979 arrests suggest that some fair goers' complaints were aggressively solicited by the State Fair administration.

As further proof of a hostile attitude on the part of the State Fair administration, the Krishnas argue that if the liason system -- created by stipulation between the Krishnas and the State Fair administration -- had been properly utilized by the administration, most, if not all of the "incidents" could have been easily resolved. Under the liason system, each side was to designate a representative to whom complaints would preferably be taken before it was forwarded through more formal dispute resolution channels. The Krishnas say that such a liason system was successfully employed during the Eastern State Exhibition held annually in Springfield, Massachusetts. At the 1979 Exhibition, there were no arrests of Krishnas arising out of their Sankirtan activities, and all fair goer complaints were purportedly resolved through the liason system. The Krishnas also claim that when a complaint about them arises at any forum, and a member of the public desires a refund, such a request is always honored. Finally, the Krishnas assert that whenever an event draws between 600,000 and 700,000 patrons, there are bound to be a few among them who are going to be less than receptive to individuals propagating unfamiliar religious beliefs.

The Krishnas state flatly that they cannot practice Sankirtan from the confines of a fair booth. They base this conclusion on both religious dogma and considerations of practicality. The Krishnas believe that, by definition, the karmi or non-believer is so caught up in the material world and oblivious to Krishna that the devotee must initiate the process towards spiritual purification:

> Well, because of the nature of the conditioned soul is rebellious for Krishna, they don't want to serve Krishna. That is why they are in the material world. It is almost like a bad child but serving Krishna it's actually what he

> should do. You see, just like a child may not want to take some medicine but he is sick and if he takes the medicine, he will just get better. But if you try to give the child the medicine he will go, "No, No, I don't want that."
>
> So it is the task of the doctor or the mother to give him the medicine because she knows it's best. So we are approaching conditioned souls because they in their own right will not turn to Krishna. [Transcript, May 7th, 1980 at p. 88].

The Krishnas further maintain that, from a practical point of view, the fair goer is unlikely on their own to go out of their way to find a Krishna booth at the State Fair. This being the case, the Krishnas would be denied or restricted in their opportunity to spread the "truth," solicit contributions, and gain converts. In brief, the Krishnas believe that comparatively, the impact of the State Fair booth restriction on them is much more pronounced than its impact on commercial vendors.

The Krishnas commenced this action because, in their view, which, has now been supported by numerous decisions of the courts, their right to practice Sankirtan is protected under the First Amendment. *See e.g. United States* v. *Silberman*, 464 F. Supp. 866, 872 (M.D.Fla. 1979) and cases cited therein. Citing the case of *Murdock* v. *Pennsylvania*, 319 U.S. 105, 111 (1943), they argue that merely because religious literature is sold by "itinerant preachers" rather than donated does not mean that such sales are not protected by the Constitution. To the contrary, plaintiffs assert that the State Fair grounds are a public forum and therefore their activities may only be reasonably restricted by the State. While they say that the stipulated conditions they agreed to with the State Fair administration are reasonable conditions, the booth restriction is not and is therefore unconstitutional. *See, Edward* v. *Maryland State Fair*, ____ F.2d ____ (4th Cir. August 12, 1980); *ISKON* v. *Bowen*, 456 F.Supp. 437, *aff'd* 600 F.2d 667 (7th Cir. 1979), *cert. denied* 444 U.S. 643 (1979).

Besides, the defendants have not, according to the Krishnas, demonstrated a compelling state interest that would justify the booth rule. Concerns for reducing traffic congestion, the commercial success of other vendors, or the likelihood that fair goers may be put off by the Krishnas, they say, are insignificant when balanced against the fundamental rights of the Krishnas to freedom of speech, religion, and assembly. *See ISKON* v. *Bowen, supra,* at 443. The Krishnas additionally maintain that the booth restriction is not justified by the State's concern to police violations of the penal laws. This policing, they add, is best pursued by prosecutions of criminal law violations, than by restraining the free expression rights of many people in order to punish a few individuals. In short, the Krishnas believe that the First Amendment guarantees their right to circulate freely in the public areas of the New York State Fairgrounds for the purpose of proselytizing, soliciting, and accepting donations for their religious organization. They ask this Court to grant them a permanent injunction restraining the defendants from enforcing the booth rules.

Placing plaintiffs' legal arguments aside for one moment, the foregoing, in plaintiffs' view, is an accurate portrayal of their religious beliefs, and their code of conduct, which, they assert, entitles them to a constitutional license to conduct Sankirtan and roving solicitations at the New York State Fair. It should be noted that, for the most part, it is the only portrayal of the Krishnas that has been put before a court of law in the United States. Yet, the eleven days of trial have provided this Court with an opportunity to evaluate testimony that expands upon and contradicts much of what has just been presented as plaintiffs' evidence. This evidence is both highly revealing and relevant to the central issue this Court addresses today. For the integrity of the record, however, it must be said that the testimony remains incomplete. This is due entirely to the actions of plaintiffs, who did not in good faith comply in a timely or

complete manner with this Court's Order requiring the production of various documents and things. That order, dated April 16, 1980, mandated that plaintiff produce various materials, including financial records, which would have enabled the Court to verify many of plaintiffs' claims with regard to the manner in which they conducted Sankirtan at the previous New York State Fairs.

To fully understand the Krishna practice of Sankirtan, let us retrace our steps, using the record of this case as our guide. We shall begin be re-examining two themes stressed by plaintiffs, but in a slightly different light: The first is the fact that, by their own admission, a central motivation behind the practice of Sankirtan is the collection of money. As we know, the Krishnas subscribe to the view that the more money they collect, the more spiritual benefit the contributor receives. Money is very important to the Krishnas. They hold money-raising marathons, and Krishna devotees are awarded "lakshmi points" for the amount of money they raise. When Krishna devotees become proficient at practicing Sankirtan and collecting money, they are given collection quotas by their Brahmanas or priests, some as high as $100.00 to $200.00 a day. In short, while the collection of money in the Krishna faith has spiritual significance, from a practical perspective, the Krishna devotee is under pressure to collect it for its own sake.

The second theme concerns the Krishnas' view of the karmi or nonbeliever. The karmi were typically referred to by the Krishna devotee witnesses at trial as either being "diseased", "illusioned", "misguided", "dogs", or "children." Although Krishnas claim that Sankirtan is an important religious ritual used to spread the "truth" of Krishna, one of plaintiffs' exhibits states: "[t]he Lord Himself as the Super soul within his heart purifies [the nonbeliever] from his maternal attachments, even if he doesn't fully understand the spiritual significance of his donation." The evidence submitted at trial revealed that this

statement has a practical translation -- it is not important to the Krishnas that the karmi understand the "meaning" of their contribution, be involved in a religious discussion about Krishna, or, as will be expanded on momentarily, even be able to recognize the religious identity of the devotee. A third theme was also raised by the Krishnas, and that is the devotee should rely on the Lord for success in practicing Sankirtan. The following would indicate that they do not. Let us now re-examine the Krishnas' solicitation methods with the considerable aid of additional trial testimony on the Krishnas' Sankirtan habits.

III.

The Krishnas have a very distinct style of appearance and dress compared to customary western fashions. For instance, Krishna males sport shaven heads except for a thin braided ponytail. On their faces, both males and females wear ceremonial "tilak" paint, which is muddy green in color. For their clothing, the males wear "dhotis" or an Indian style dress-like garment, and the females wear "saris", or the feminine version of the same thing. Both males and females wear "tulsi" beads around their necks and frequently carry burlap pouches or satchels. Usually, Krishna devotees appear this way in public and are commonly seen in the streets in large groups, dancing and chanting, which is the traditional form of Sankirtan. Yet, at the New York State Fair, when the Krishnas performed their modern version of Sankirtan, they literally adopted disguise. The men wore wigs to cover up their heads, and they donned western styled dress. One Krishna stated at trial that because of the disguise, people feel more at ease when solicited. Before addressing this claim, let us take a closer look at how this disguise is employed. To do so, we must first re-examine the method by which Krishnas are trained to practice Sankirtan.

In the first place, solicitation is not required of all devotees. At their farm in Port Royal, Pennsylvania, for example, only a

very few devotees ever engage in Sankirtan. The same is true of the urban temples. In New York City, the Krishna temple has between 600 and 1000 members, 190 of whom live at the temple. Solicitors are taken only from among those who live at the temple, and of that group, only 25 or so participate. To learn how to solicit, devotees are given classroom and on-the-job training. The instructions and the manner in which they are carried out are the same from temple to temple. The classes seem to service the purpose of "psyching" devotees up for their solicitation duties. They are encouraged to be aggressive when soliciting and to try to get as much money from the karmi as possible. Moreover, they are told that the best way to please their spiritual master is by doing such duties well. This statement holds special significance to the Krishnas because spiritual masters hold great power over devotees. If a devotee is told by a spiritual master that a snake is a stick and to pick it up, then the devotee is to comply. Creativity in soliciting is also encouraged. Devotees are told to figure out ways to get the karmi to donate more money. For example, at Christmas time, the most common Krishna ploy is to dress up as Santa Claus and give out candy canes while soliciting contributions.

More specific instructions are given during the on-the-job training. New devotees are usually sent out with senior devotees who the Brahmanas or priests consider to be experienced at Krishna methods of solicitation. The new devotees are told to follow the directions of their instructor. For example, one ex-devotee from the Baltimore temple was sent out by her Sankirtan leader with two of the best female solicitors of the temple. She was instructed not to wear an identification badge and, if possible, to avoid verbally affiliating herself with the Krishnas to potential donors. If someone were to ask her affiliation, she was taught to try to confuse that person by slurring the word "Krishna" into sounding like the word "Christian." She was also instructed to make up "purposes" for requesting

donations. For example, she was told to say that she was soliciting for worldwide education and food distribution programs or children's drug programs. She was further told that it was all right not to ask people's permission before pinning a button or artificial flower on them. As for the religious records which were used for solicitation purposes, potential donors were informed that the musical stars mentioned on the back of the albums actually performed on the albums. According to her testimony, the devotees would only rarely discuss religion with a prospective contributor. Religious discussions were considered a nuisance to the devotees, especially when they solicited at places with a lot of people, because such conversations would cut down on the amount of soliciting that could be done.

Other techniques for increasing monetary contributions included: flirting with males, attempting to get people to donate larger bills, intentionally miscounting change, folding over bills to shortchange people, and holding large bills for a long time in an effort to make the donor tired of the idea of getting the desired amount of change back. The junior devotee was told that it was all right to lie to security personnel in order to obtain the right to solicit at an airport, and to enter private premises to solicit without permission. She was taught to target people such as navy men as easy marks. Once her instructor took her to a nearby naval base on its monthly pay day. Apparently, the Krishna instructor's secret ambition was to get a serviceman to "donate" his entire monthly pay check to the Krishnas. Asked by defendants' counsel whether these incidents were isolated events, perpetrated by overzealous devotees, the ex-devotee responded: "It was their normal enthusiasm, they had done it for a long time."

Indeed, the Court learned that these incidents were not isolated, and they were not the acts of a small handful of "immature" or "inexperienced" devotees. In fact, almost without exception, the testimony of this ex-devotee should be looked

upon as an index of the different soliciting methods habitually employed by the Krishnas. As proof of this, we will examine the complaints of fair goers and other local citizens concerning the solicitation habits of the Krishnas in the past three New York State Fairs and in the Syracuse area as a whole. Before doing so, however, let us first take a closer look at just how experienced many of the Krishnas are at soliciting, and the attitude of some of the Brahmanas, or priests, of the religion towards those devotees who conduct Sankirtan.

As previously mentioned, one Krishna priest testified at trial that complaints about the Krishnas' solicitation methods are due primarily to the actions of inexperienced devotees, hostile fair officials or fair goers. In addition, the Krishnas claim that if complaints are received by them about a devotee's solicitation methods, that devotee is removed from the Sankirtan party. These statements are absolutely untrue. For instance, the Krishna priest who made the statement, Christopher Kelly, is not only a priest of the Krishnas, he has performed Sankirtan for over six years, and even gives instruction on its practice to "spiritually advanced" devotees. Mr. Kelly was arrested at the 1979 New York State Fair. Despite his "qualifications," the arrest allegedly grew out of a soliciting incident involving a 14 year-old boy. The boy's statement is quoted in part below:

> This guy came up to me, who was later identified to me as being Chris Kelley, and he stuffed an album, record album, under my arm. He told me he was giving me the album and then he asked me for a small donation so I gave him some change, it was either 30 or 35 cents. He said, "Give me a bill and I'll give you some change." So I pulled a dollar bill and he said, "No give me a twenty." He saw the twenty dollar bill that I pulled out of my pocket. I thought he was going to give me nineteen dollars back and he only gave me back ten dollars. I gave him the album back and told him that I wanted my money back. I gave him the album and he said, "Don't push that at me." I told him I wanted my money back again and he gave me back the twenty and then I told him I wanted the

one dollar back too and he gave it back to me. They left and I went to get my clothes out of my car and went back and reported it to the trooper.

Although he has been arrested and convicted many times for illegal solicitation, another Krishna devotee who is still involved in soliciting is Raymond Kissane. His solicitation technique would indicate that he is anything but the portrait of the culturally shocked, hapless, and unconfident devotee whose actions, according to the Brahma quoted earlier in this opinion, may result in solicitation complaints. Mr. Kissane has at least six arrests and convictions involving illegal solicitations dating back to 1976. He was arrested and convicted at the New York State Fair in 1977 for disorderly conduct after a 15 minute spree in which he jumped in front of as many people as he could on a pedestrian ramp, grabbing people by the arm as they went along. More recently, Mr. Kissane was arrested at the 1979 North Carolina State Fair and was charged with three counts of false pretenses, when he allegedly misrepresented the content of records and shortchanged fair goers. He pleaded no contest to a reduced charge of larceny by trick.

Still another Krishna devotee, James Griffith, was arrested three times at the New York State Fair in 1979. Needless to say, he was not removed by the Krishnas from soliciting after his first arrest. One incident allegedly grew out of a combined "money-holding" and shortchange scam. Two others involved placing records under people's arms as they were walking, in order to get their attention. There were other multiple arrests of Krishnas as well. Richard Banbury, a Krishna devotee, was arrested at the 1978 State Fair for harrassment; the charge was subsequently reduced, and adjourned in contemplation of dismissal. He visited the State Fair once again in 1979 and was arrested and convicted for disorderly conduct.

APPENDIX A — Memorandum-Decision and Order of Munson, J., dated August 25, 1980.

These are only a sampling of Krishna arrests and convictions growing out of their solicitation activities which directly or indirectly relate to the Krishna claim that they use honest solicitation techniques at the New York State Fairs. None of the facts underlying these incidents reflect the inexperience of the Krishna devotees at soliciting or the hostility of fair officials or fair goers. Quite the contrary, these individuals are experienced at what they do, and the Krishnas deliberately permit them to continue performing illegal solicitation techniques, even though such techniques frequently lead to the arrest and conviction of Krishna devotees. It would seem that so long as the Krishnas financially benefit from such techniques, one can expect there will be similar arrests and convictions in the future.

A Krishna Brahmana is quoted above as saying that "in this day and age, example is more important than precept. The particulars are that you must behave according to the philosophy that you are trying to preach . . . ." Consider this statement along with the following and final example of the fact that the Krishnas continue to financially benefit from the services of individuals who they know employ overly aggressive solicitation techniques, but who are not removed from Sankirtan duties. At one point during the trial, counsel for plaintiff asked the ex-Baltimore devotee, whose escapades are described above, whether her two women instructors could properly be characterized has "crooks." She answered in the affirmative. Subsequently, a Brahmana supervisor, Steven McLain, who oversaw the activities of these women instructors, was asked by defendants' counsel whether he considered the woman known as the more aggressive of the two to be a crook. He responded in the negative. In fact, even though Mr. McLain had learned of numerous complaints arising out of the aggressive solicitation habits of this particular individual, he assigned her to teach fledgling Krishnas, such as the ex-Baltimore devotee, how to do the same. The Court now turns to a more detailed analysis of

how the Krishna solicitation techniques were employed at previous New York State Fairs, and in and around the Syracuse community as a whole at the time of the State Fairs.

As the Court learned from the trial testimony, a common practice of the Krishnas is to "target" their prospective donors. The Krishnas do not rely merely on indiscriminate solicitation. They pick on certain types of people, or people in certain situations, when they solicit. Once such group is teenagers, especially those who appear unsophisticated. A complaint involving a teenager has already been described, and it is one of several complaints involving teenagers. Another group that is "targeted" is couples with young children. The Krishnas discovered that these couples are easy marks because they cannot afford to divert their attention for very long from watching the children. Thus, the persistent Krishna solicitor can be relatively assured of a contribution, just so he will go away and let the couple go about their business.

Sadly, still another group that is "targeted" is the handicapped. At least two incidents at past New York State Fairs resulted when Krishna devotees approached groups of retarded adults and pinned flowers on them while, at the same time, asking for contributions. Many of these adults clearly were startled because they did not understand what the Krishnas were doing. Obviously the Krishnas knew they would not and sought to use this fact to their advantage. Individuals who appear to be mentally slow or very unsophisticated are also "targets." On September 1, 1978, which was during the week of the 1978 State Fair, one such individual was approached in downtown Syracuse by a female Krishna devotee, who almost succeeded in obtaining a "contribution" of $80.00 through the use of the "wad of bills" technique which is explained below. The entire incident was observed by a plainclothes police officer who forced the devotee to return the money. The same female devotee then went across the street, and was involved

in another soliciting incident with a young boy when she allegedly would not return is $10.00. Had the officer not intervened in both cases, the Krishna devotee would have succeeded, as the next example of "targeting" demonstrates.

In a related incident which occurred the same day and in the same vicinity, a twenty-four year old girl afflicted with cerebral palsy was waiting for a bus to take her home from work. She was approached by a female devotee who pinned an artificial flower on her without her permission, and asked for a donation for "starving children". When the young woman reached in her purse for her wallet to make a $1.00 donation, the devotee stood on her tiptoes and observed that the wallet contained some larger bills totaling $20.00. The devotee asked the young woman to exchange the larger bills for all of the dollar bills that she was holding. The young woman agreed to do so and expected $19.00 in change. She was not to receive it. The Krishna devotee handed her a copy of the *Bhagavad-Gita* and "took off" without giving her the change.

It has already been described how at the New York State Fair the Krishnas conceal their religious identity from people by wearing western dress. There were many incidents of the Krishnas' attempt to further cloud their identity by hiding their identification badges, which read "ISKCON", not the religion's popularly known name "Hare Krishna", from being clearly visible, or not wearing them at all. This tactic was revealed by the ex-Baltimore devotee as being purposeful. Another device used by the Krishnas is to carry someone else's identification card. By not properly displaying their identification badges the Krishnas not only concealed their identity, but they were in violation of a Court order requiring them to do so.

For the past three years the devotees at the New York State Fair have routinely misrepresented their Krishna affiliation as well. This is accomplished in two different ways. First, by

misrepresenting the organization that they solicit for, and second by misrepresenting the items that they sell. The most frequently used lines at past State Fairs represented to the fair goer that the devotee was either soliciting for the benefit of crippled children's hospitals, drug addicts, or retarded children. These are not true statements even if broadly construed. If a religious book or record was sold, Brahmana testimony at the trial indicated that the money was used to produce another book or record. The remainder of the contributions are used to support the various temples or farms. For example, at the 1978 State Fair, contribution money was used to bail out arrested Krishnas from jail. Aside from the admissions made during trial, which the Court believes is dispositive of this issue, the Krishnas refused to comply with this Court's Order compelling them to turn in to the Court their financial records which would conclusively prove the matter one way or another. Some information was handed over, however, it was subsequently conceded by plaintiff's treasurer Scott Ellis to be inaccurate. Therefore, the Court must assume that accurate proof of plaintiff's claims of soliciting on behalf of charity does not exist.

Krishnas have also fabricated stories portraying themselves as representatives of contests giving away records to the 50 best-looking couples, or as radio station employees willing to give lucky fair goers a record if they named the correct radio station. Needless to say, the Krishnas did not care which station the fair goer named. This assumption was borne out when one plainclothes police officer named a television station from a distant city and was told by the devotee that it was the correct answer. Without exception, after a fair goer "won" the record by naming some type of station, the Krishna devotee, still without identifying their true identity, asked for a contribution. As noted above, the use of such stories was also employed at the Baltimore temple, and the Krishnas used similar stories at the Erie County Fair and the Eastern States Exposition.

The Krishnas also misrepresented their affiliation by the various items they sold for a contribution. Artificial flowers and "Keep On Truckin" buttons have no religious significance, but of course they were selected as such because they did not. The items were used strictly because they could be rapidly sold without any questions -- especially questions about the Krishna religion. The most commonly used items were the religious records. It is difficult to tell they are religious albums just by looking at them. They are packaged to look like the records of popular recording artists, and the word ISKCON only appears in small lettering on the back. The records are first pitched to the fair goer and if they show no interest, the Krishna devotee then turns the record over to show that it contains performances of the Beatles or Stevie Wonder. One women was startled to discover that her Stevie Wonder album sounded like a "cat in heat," and she could not figure out why Stevie Wonder would want to ruin his career like that. What she had actually heard was a typical Krishna song. The same kind of record scam was used in Baltimore, the Erie County Fair, and the Eastern States Exhibitions. Even though the Krishnas have received many complaints about the representations they make with respect to these records, they continue to use them and have yet to alter the misleading packaging. The Court cannot help but conclude that the Krishnas are only interested in taking money from people and care very little about the means they use to get it.

It is not unusual for those means to be more forceful. Sometimes a victim's money is taken outright and the devotee disappears in the crowds. At the State Fairs, devotees also used various short-change tricks such as those described by the ex-Baltimore devotee. For instance, dollar bills were folded over to look like more bills were underneath; devotees would intentionally hold money and pretend to be making change while hoping to distract the fair goers with conversation so that they would forget how much change they asked for; devotees would

ask for larger bills because they were constantly able to pressure a person into giving more money if they could get a larger bill to make change from. The "wad of bills" scam was also employed, whereby a Krishna would ask to exchange their singles for bills with larger denominations. Once they got the bill in their hand, they would either not give the correct change or they would "take off" into the crowd. Without exception, fair goers were pinned with an artificial flower or candy without their permission. One woman complained that after she declined to give a contribution for the flower pinned on her blouse, the devotee tore the flower off her and called her a demon. A similar incident happened with another fair goer. This individual was approached by a Krishna devotee and correctly named a radio station and won a record as a "prize". He was then asked to make a contribution which he refused to do because, as he understood it, the record was free. The devotee then tried to grab the record out of his hands. When he failed to do so, he followed the fair goer and cursed him as he walked. As mentioned above, there were numerous other arrests of devotees at the 1977, 1978, and 1979 State Fairs. Some of these arrests have led to convictions, some of the defendants skipped bail, and the remaining charges are still pending.

One of the only things that the Krishnas did not do at the State Fairs was to discuss their religion with fair goers. Despite the Krishna claims that Sankirtan is the means by which they spread the "truth" of Krishna and gain converts, they did not appear to engage in any sort of religious discussion with the fair goers. At trial, each witness who was approached by the Krishnas and asked for money confirmed that the Krishnas made no mention of their religion at all. Some witnesses claimed they were given some sort of magazine by the devotees but they did not know what the magazine was about. This lack of knowledge can only be attributed to the fact that the Krishnas never explained their religious paraphernalia to the fair goers and rarely identified or explained their affiliation.

It should also be noted that Krishna devotees were found to have flagrantly violated the terms of the stipulated conditions made part of the Court's Orders granting the plaintiffs preliminary injunctions for the 1978 and 1979 State Fairs. Problems with identification badges was already mentioned. Other violations include failing to: register devotee identities, engage in solicitation in a peaceable manner and without harassment to the public, ask fair goers' permission before touching them, honor the requirement that they not solicit within 10 feet from an exhibition or booth, or solicit fair goers sitting on a bench or waiting in a ticket line. Other violations of Court Orders included entering the fair grounds for solicitation purposes during a period when Krishnas were ordered not to do so and trying to enter the fair grounds without paying the price of admission. Similar problems were also experienced with violation of the stipulated agreement at the Eastern States Exhibition.

IV.

Plaintiffs bring this action under 42 U.S.C. §1983, claiming that their First Amendment rights will be violated if their Sankirtan activities are confined to a booth. Before the Court addresses these alleged violations of plaintiff's constitutional rights, it must first consider whether the alleged actions of defendants amount to "state action", which is the jurisdictional prerequisite of Section 1983. In *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345, 351 (1974), the Supreme Court held that for state action to exist there must be a "sufficiently close nexus between the State and the challenged action of the [defendant] so that the action of the latter may be fairly treated as that of the State itself." *See, Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961); *Graseck* v. *Manceri*, 582 F. 2d 203, 207-09 (2d Cir. 1978), *cert. denied*, 439 U.S. 1129. In the present case, neither party disputes the fact that as administrators of the New York State Fair, and responsible for the

regulations in dispute, the actions of defendants demonstrate a sufficiently close nexus with the State of New York. The Division of the State Fair and the New York Industrial Exhibit Authority are both state agencies that exist at the pleasure of the State Legislature for purposes of operating the State Fair. The State provides these agencies and the Fair with its operating budget, fair grounds and buildings, and State Police patrols. In sum, the actions of these defendants in enacting and enforcing the booth rules are "state action" and therefore the Court may properly exercise jurisdiction over plaintiffs' constitutional claims which will now be addressed.

The right of a citizen to form, hold, and express opinions and beliefs in a public forum is so essential to our democracy that it is considered to be "fundamental." *Schneider* v. *State*, 308 U.S. 147, 161 (1939). This proposition is reflected in the fact that "[w]herever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens discussing public questions." *Hague* v. *CIO*, 307 U.S. 496, 515 (1939); *Kunz* v. *New York*, 340 U.S. 290, 293 (1951). At the same time, these First Amendment rights are not absolute. *Murdock* v. *Pennsylvania*, 319 U.S. 105, 110 (1943); *Cox* v. *New Hampshire*, 312 U.S. 569, 574 (1946). While the government has no power to regulate communication or belief because of its content, *Grayned* v. *City of Rockford*, 408 U.S. 104, 115 (1972); *Police Dep't of Chicago* v. *Mosley*, 408 U.S. 92, 95 (1972); *Cohen* v. *California*, 403 U.S. 15, 24 (1971); *Street* v. *New York*, 394 U.S. 576 (1969); *New York Times* v. *Sullivan*, 376 U.S. 254, 269-270 (1964), *Niemotko* v. *Maryland*, 340 U.S. 268 (1951), *Cantwell* v. *Connecticut*, 310 U.S. 296, 305 (1940), it may restrict the exercise of First Amendment rights if justified by compelling public interests. *Grayned* v. *City of Rockford*,

408 U.S. 104, 115-16 (1972); *Police Dep't* v. *Mosley*, 408 U.S. 92, 98 (1972); *Adderly* v. *Florida*, 385 U.S. 39 (1966); *Cox* v. *Louisiana*, 379 U.S. 536, 554-55 (1965); *Sherbert* v. *Verner*, 374 U.S. 398 (1963).

Still, even when regulations are justified because of a compelling public interest, the regulations must be written as to reasonably restrict the time, place and manner of the right involved. As held by the Court in *Virginia Pharmacy Board* v. *Virginia Consumer Council*, 425 U.S. 748, 771 (1976): "[w]e have often approved restrictions [on time, place and manner] provided that they are justified without reference to the content of the regulated speech, that they serve a significant governmental interest, and that in so doing they leave open ample channels for communication of the information." *See, Grayned* v. *City of Rockford*, 408 U.S. 104, 115-16 (1972); *Jamison* v. *Texas*, 418 U.S. 413 (1943); *Martin* v. *Struthers*, 318 U.S. 141 (1943); *Cox* v. *New Hampshire*, 312 U.S. 569, 574-77 (1941); *Cantwell* v. *Connecticut*, 310 U.S. 296, 304 (1940); *Schneider* v. *State*, 308 U.S. 147, 160-61 (1939); *Concerned Jewish Youth* v. *McGuine*, No. 79-7456 (2d Cir. March 27, 1980); Tribe, *American Constitutional Law* 687 (1979). The balancing process which must be applied in these situations has been stated as follows:

> Although American constitutional jurisprudence, in the light of the First Amendment, has been jealous to preserve access to public places for purposes of free speech, the nature of the forum and the conflicting interests involved have remained important in determining the degree of protection afforded by the Amendment to the speech in question.

Lehman v. *City of Shaker Heights*, 418 U.S. 302-03 (1974). *Hague* v. *CIO*, 307 U.S. 496, 515-516 (1939).

There are other limitations on the type of regulation that may be utilized. For example, where discretion is vested in administrative officials it must be appropriate, and placed under

specific guidelines so as not to be unbridled. *Shuttlesworth* v. *Birmingham*, 394 U.S. 147 (1969); *Cox* v. *Louisiana*, 379 U.S. 536, 555-558 (1965); *Staub* v. *City of Baxley*, 355 U.S. 313, 321-325 (1958); *Saia* v. *New York*, 334 U.S. 558, 560-62 (1948). Even when regulations are authorized by explicit and narrow legislative authority, they must be "narrowly tailored to further the State's legitimate interest, *Grayned* v. *Rockford*, *supra*, 408 U.S. at 116-17; *Police Dep't* v. *Mosley*, *supra*, 408 U.S. at 98, *Cox* v. *New Hampshire*, 312 U.S. 569, 575-76 (1941), and great weight must be given to the fact that communication is involved. *Talley* v. *California*, 362 U.S. 60 (1960), *Schneider* v. *State*, *supra*. The State, moreover, bears the burden of justifying restrictions, *Cohen* v. *California*, 403 U.S. 15, 20 (1971). And finally, any regulation which takes the form of a prior restraint is subject to exacting scrutiny. *Southeastern Promotions Ltd.* v. *Conrad*, 420 U.S. 546, 558 (1975); *Organizations for a Better Austin* v. *Keefe*, 402 U.S. 415, 419 (1971). In brief, First Amendment rights "must not, in the guise of regulation, be abridged or denied." *Hague* v. *CIO*, 408 U.S. 104, 117 (1972).

Unlike many other regulations challenged by the Krishnas, the regulation at issue in the present case does not, in any fashion, restrict the Krishnas right to discuss their religion with anyone or distribute religious paraphernalia on any part of the fair grounds at any time. *Compare Edwards* v. *Maryland*, No. 79-1545 (4th Cir. August 12, 1980) (solicitation and distribution of literature confined to a booth); *ISKCON* v. *Bowen*, 456 F. Supp. 437 (S.D. Ind. 1978) *aff'd* 600 F.2d 667 (7th Cir. 1979) *cert. denied* 444 U.S. 643 (1979) (solicitation and distribution of literature confined to a booth). Furthermore, the regulation at issue here does not limit the number of persons that may solicit on the fair grounds at any one time. *Compare ISKCON* v. *McAvey*, 450 F. Supp. 1265 (S.D.N.Y. 1978) (limits solicitors at World Trade Center to ten). The regulation makes no

relevant distinction on the basis of the content, nor does it grant an official unbridled discretion to deny Krishnas the right to solicit. *Compare ISKCON* v. *Kearnes*, 454 F. Supp. 116 (E.D. Cal. 1978) (permits issued to those who "probably will not" engage in fraud.) And it is not challenged as being vague or overbroad on its face. *Compare, ISKCON* v. *Eaves*, 601 F. 2d 809 (5th Cir. 1979).

Instead, the present regulation merely requires that "all solicitation for either contributions or sale must be made from within the confines of a booth or display." It should be noted that there is also a license requirement mandating that a fee be paid for the exhibit space. This fee requirement was not made an issue during the trial of this action by plaintiffs and the Court does not address it today. Plaintiffs did not offer proof on the extent of the fee, and thus the Court is without any evidence to conclude whether the booth fee is a "nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 113-14 (1943), or whether it is a "flat license tax the payment of which is a condition of the exercise of . . . constitutional privileges." *Id.* at 112.

With these preliminary matters out of the way, the Court can narrow the issues that need to be addressed. The present case does not involve questions of prior restraint due to license fees or the inability of plaintiff to move about and distribute literature, or engage in religious discussions. Neither does this case deal with the issue of whether a regulation discriminates in treatment because of the content of the speech. Defendants have made no attempt to ban plaintiffs from the fair due to a judgment on defendants' part concerning the nature of plaintiff's religious beliefs. There is also no claim by plaintiffs that the booth restriction grants administrative officials unbridled discretion in granting or denying plaintiffs a booth. Even though a "public welfare" standard for booth content is to be

found in the disputed regulation, plaintiffs have not challenged this provision and it is not applicable here. In addition, plaintiffs do not claim that defendants' regulation is void for vagueness. It would seem that plaintiffs' claims that the booth restriction violates their rights to freedom of speech, religion, and assembly commonly evolve from the constitutional doctrine of overbreath, as applied. *See Generally, Grayned* v. *City of Rockford*, 408 U.S. 104, 114-15 (1972). In other words, it is plaintiffs' claim that the booth restriction is not a reasonable time, place, and manner regulation. The thrust of plaintiffs' claim is that there is a less restrictive means by which defendants can regulate plaintiffs' First Amendment rights and still accommodate the State's legitimate regulatory interests. Before addressing this argument, the Court will first examine whether the State Fairgrounds is a "public forum" or an arena traditionally associated with the exchange of views among the public and thus increasing the burden on the State to justify the extent of its regulatory scheme. *See generally*, Tribe, *American Constitutional Law* 690 (1979); Stone, "Fora Americana: Speech in Public Places," Sup. Ct. Rev. 233 (1974).

Where places of social commerce are generally reserved or associated with the exercise of First Amendment rights, then it is incumbent on the state to demonstrate a compelling interest in its regulatory scheme, which must, as a consequence, be drawn with narrow time, place, and manner regulations. *See Wright* v. *Chief of Transit Police*, 558 F.2d 67, 68 (2d Cir. 1977) (subway station held to be public forum); *Wolin* v. *Port of New York Authority*, 392 F.2d 83, 92-93 (2d Cir. 1968) (bus terminal held to be public forum). Defendants assert that the State Fairgrounds is not a public forum. According to them, the state fair is a "non-traditional" forum, whose chief purpose is as a place to house agricultural and industrial exhibitions, and to support educational and competitive junior activities. The Fairgrounds, maintain defendants, cannot be

equated on a constitutional basis with a park or a street corner "immemorially . . . held in trust for the use of the public, and, time out of mind, . . . used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague* v. *CIO*, 307 U.S. 495, 515 (1939). The Court cannot agree. In the words of Judge Higginbotham, "[a] fair is almost by definition a congeries of hawkers, vendors of wares and services, purveyors of ideas, commercial, esthetic and intellectual." *ISKCON* v. *State Fair of Texas*, 461 F. Supp. 719 (N.D. Tex. 1978). It would be unreasonable to hold that the New York State Fair could accurately be described as substantially different in purpose or effect. Still, merely because the State Fair is a public forum does not mean that it is excepted from the reasonable regulations of time, place and manner. *Lehman* v. *City of Shaker Heights*, 418 U.S. 298, 317 (1974); *Wright* v. *Chief of Transit Police*, 558 F.2d at 68; *Wolin* v. *Port Authority*, 392 F.2d at 89. This issue shall now be discussed.

Plaintiff asserts that the booth restriction is an unreasonable method by which to regulate the Krishnas' solicitation activities. They claim that the government interests raised by defendants, such as to prevent traffic congestion, insure public safety and to protect the public from fraud, do not justify their confinement to a booth. In plaintiffs' view, defendants have not offered any serious evidence of disruption in traffic as a result of plaintiffs' Sankirtan activities. With regard to fraudulent behavior, plaintiffs assert that any fraud perpetrated by devotees are isolated instances, and may be adequately dealt with by criminal prosecutions. Plaintiffs additionally point out that agreements with other fair administrations have been less restrictive than the booth requirements of defendants and have permitted Krishnas to practice Sankirtan. Finally, where liason systems have been employed in good faith, plaintiff assert that complaints have been resolved, and the need for arrests has been eliminated.

In contrast, defendants contend that the New York State Fair booth rule is a reasonable time, place, and manner regulation which is justified by compelling government interests. Defendants place the foundation of their argument on the State's interest in preventing fraud. They point to their previous experience with the Krishnas as proof positive of the necessity of the booth rule to combat plaintiffs' fraudulent activities. The Krishnas solicitation activities, say defendants, also demonstrate the need for a booth rule to control pedestrian traffic. Defendants argue that the booth rule is additionally necessary to protect the rights of exhibitors and fair goers to communicate with each other, and the rights of the fair goers to choose or decline access for communication, and assures the equal treatment of political and religious organizations.

The issue in this case is a narrow one. That is, whether it is constitutionally permissible for a State Fair to require that solicitation of money for religious purposes be restricted to a booth. While plaintiffs claim that their rights to freedom of speech, religion and assembly would be violated if their Sankirtan activities are restricted to a booth, they do not dispute that even these activities are subject to reasonable time, place, and manner regulations. This rule was succinctly stated as follows:

> The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise.

Cantwell v. *Connecticut*, 310 U.S. 296, 305 (1940). Although the Krishnas claim that their very act of soliciting is a religious belief, the test just enumerated is applicable nonetheless. Furthermore, the Supreme Court has held "that when 'speech' and

'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." *United States* v. *O'Brien*, 391 U.S. 367, 376 (1968) (burning draft card found to be unprotected speech); *accord Ohralik* v. *Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978); *see also Sherbert* v. *Verner*, 374 U.S. 398, 403 (1963) (challenge to unemployment compensation act by Seventh Day Adventist where law required that individual remain available to work Saturdays). The Court will assume for purposes of this analysis that the very act of exchanging money does carry with it some religious significance for the Krishnas. However, even the Krishnas concede that the monies collected in Sankirtan are also significant to them for its purely commercial value to support the religion. [Plaintiffs' trial brief, Appendix A ¶B]. To the extent that they do, the Court is hard pressed to distinguish between the solicitation activities of Sankirtan and purely commercial speech which the Supreme Court has said deserves the least constitutional protection. In *Va. Pharmacy Bd.* v. *Va. Consumer Council*, 425 U.S. 748, 771-72 (1976), the Court held:

> Untruthful speech, commercial or otherwise, has never been protected for its own sake. *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 340 (1974); *Konigsberg* v. *State Bar*, 366 U.S. 36, 49, and n. 10 (1961). Obviously, much commercial speech is not provably false, or even wholly false, but only deceptive or misleading. We foresee no obstacle to a State's dealing effectively with this problem. The First Amendment, as we construe it today, does not prohibit the State from insuring that the stream of commercial information flow cleanly as well as freely.

The Court continued its statement in an accompanying footnote which is worth quoting at length:

> [24]In concluding that commerical speech enjoys First Amendment protection, we have not held that it is wholly undifferentiable from other forms. There are commonsense differences between speech that does "no more than

propose a commercial transaction," *Pittsburgh Press Co.* v. *Human Relations Comm'n*, 413 U.S., at 385, and other varieties. Even if the differences do not justify the conclusion that commercial speech is valueless, and thus subject to complete suppression by the State, they nonetheless suggest that a different degree of protection is necessary to insure that the flow of truthful and legitimate commercial information is unimpaired. The truth of commercial speech, for example, may be more easily verifiable by its disseminator than, let us say, news reporting or political commentary, in that ordinarily the advertiser seeks to disseminate information about a specific product or service that he himself provides and presumably knows more about than anyone else. Also, commercial speech may be more durable than other kinds. Since advertising is the *sine qua non* of commercial profits, there is little likelihood of its being chilled by proper regulation and forgone entirely.

Attributes such as these, the greater objectivity and hardiness of commercial speech, may make it *less* necessary to tolerate inaccurate statements for fear of silencing the speaker. [Emphasis Added]. Compare *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), with *Dun & Bradstreet, Inc.* v. *Grove*, 404 U.S. 898 (1971). They may also make it appropriate to require that a commercial message appear in such a form, or include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive. Compare *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974), with *Banzhaf* v. *FCC*, 132 U.S. App. D. C. 14, 405 F.2d 1082 (1968), cert. denied *sub nom. Tobacco Institute, Inc.* v. *FCC*, 396 U.S. 842 (1969). *Cf. United States* v. *95 Barrels of Vinegar*, 265 U.S. 438, 443 (1924) ("It is not difficult to choose statements, designs and devices which will not deceive").

Accord, Freidman v. *Rodges*, 440 U.S. 1 (1979). *See* Emerson, *The System of Freedom of Expression*, 21-26 (1970). Still, plaintiffs cite the case of *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943), *overruling Jones* v. *Opelika*, 316 U.S. 584 (1942) (license fee for selling religious paraphernalia found constitutional because it was pure commercial activity), for its statement that:

> But the mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterpreise. If it did, then the passing of the collection plate in charch would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books.

What plaintiffs fail to point out is that the *Murdock* Court qualified its statement on p. 116. The Court said "the present ordinance is not directed to the problems with which the police power of the state is free to deal . . . . They are pursuing their solicitations peacefully and quietly." * * * "Nor do we have here, as we did in *Cox* v. *New Hampshire*, *supra*, and *Chaplinsky* v. *New Hampshire*, *supra*, state regulation of the streets to protect and insure the safety, comfort, or the convenience of the public." *See* Tribe, *American Constitutional Law*, 724-25 n. 10 (1979) (*Murdock* tax fell unevenly on poor) *citing* Emerson, *The System of Freedom of Expression* 421 (1970). In this sense, then, *Virginia Board of Pharmacy* stands for the same proposition as *Murdock*. The state has a compelling interest in regulating speech, of whatever type, which is fraudulent in nature. *Accord Valentine* v. *Christensen*, 316 U.S. 52 (1942); *Schneider* v. *State*, 308 U.S. 147 (1940); *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940); *Edwards* v. *Maryland*, No. 79-1545 (August 12, 1980) *reversing* 476 F. Supp. 153 (D. Md. 1979); *ISKCON* v. *Bowen*, 600 F.2d 667 (7th Cir. 1979).

The interest of the government in exercising its traditional police power function for the public health safety and welfare is beyond question. Pursuant to this power, state administrators, such as defendants, may enact reasonable regulations which serve these ends. In this regard, the booth restrictions at the New York State Fair are a legitimate and compelling administrative aid for the protection of the citizens and society as a whole. One need not look any further than the facts of this

case to demonstrate that these restrictions are justified, and are reasonable time, place, and manner regulations which employ the least restrictive means by which the State may regulate First Amendment rights.

The State Fair booth regulation is a reasonable means to combat widespread fraud that cannot be effectively checked by the criminal justice system. There is no question from the record in this case that the Krishnas are engaged in a widespread and systematic scheme of accosting, deceit, misrepresentation, and fraud on the public in their Sankirtan activities. The record shows patterns of deceptive practices identical in nature and practiced throughout New York State, Massachusetts, and Maryland. Other cases involving the Krishnas have reported similar findings, though these courts did not delve into such incidents to the extent that was done in this case. *See Edward* v. *Maryland*, No. 79-1545 (August 12, 1980) at p. 9 n. 2; *ISKCON* v. *St. Fair of Tex.*, 461 F. Supp. 719, 723-24 (N.D. Tex. 1978). Plaintiffs have made little, if any, attempt to control its members or to bring these incidents to a halt. Quite the contrary, the Krishnas have condoned such practices by using experienced "thieves" to teach its newer members how to solicit money from the public in exactly the same way. Instead of removing individuals who are known to the Krishna Society as being repeat offenders or overly aggressive, the Krishnas have continued to accept the "fruits" of such solicitation methods for its own commercial gain, all under the "cloak" of being a religion.

There are two reasons why this practice continues today, and the first has been discussed immediately above. The second reason is that the regulatory methods employed in the past by various government officials and courts have facilitated the Krishnas in perpetuating their illicit acts. Both government regulations and court orders restricting their conduct have been flagrantly violated. *See e.g., Edwards* v. *Maryland, supra.* In

fact, the very regulations that plaintiffs urge this Court to recognize today as being less restrictive alternatives to the booth rule are the same regulations that plaintiffs have stipulated to with various defendants around the country and, from all indications, have violated with unabashed arrogance. The liason system proposed by plaintiffs as a less restrictive alternative is a sham. This Court finds little use in so-called "informal" dispute resolution methods which merely serve as a means to keep criminal recidivists from receiving the full measure of criminal justice. Such a device is not what should rightfully be considered a useful "social tool." As proof of this fact, defendants' Exhibit CR is a compilation of the complaints received by the West Springfield, Massachusetts Police Department, which took complaints for the 1979 Eastern States Exhibition. As a random sample, consider the first five complaints. The first complaint concerns a fair goer who, after receiving a record, was not given back the change he asked for by the Krishna devotee. The second complaint involved two fair goers who were approached by a devotee and each handed a record and told that they were lucky winners for the day. They were then asked for contributions for the records they had "won." The fair goer offered him a dollar. The Krishna devotee took five dollars from the fair goer, took the other fair goer's record back, and said "thank you." The third complaint concerns one of the witnesses in the instant case, Kenneth Solomon, who was wearing incorrect identification when spotted by a police officer when he was standing in an area of the fair grounds which was off-limits to him under the stipulated agreement between the Exhibition and the Krishnas and was engaged in a conversation with another devotee. The second Krishna was also using the wrong type of identification in violation of the stipulated conditions. The fifth complaint was by a Krishna devotee who claims that he handed a fair goer a record and told him that it was not available in stores, but was for a benefit of the Krishna Society which was helping people with farming and education.

At that point, the fair goer must have turned to walk away with the Krishna record in tow. The nature of the Krishna devotee's complaint was that the fair goer took the album without giving the Krishna a donation.

The first four examples are not isolated instances of accosting or misrepresentation, nor are they "speculative;" they are systematic, symptomatic and patternistic. While the penal law has been traditionally referred to by the courts as a means by which such incidents can be resolved to the best interests of the society as a whole, *see e.g., Schneider* v. *State*, 308 U.S. 164-65 (1970); *Edwards* v. *State of Maryland, supra*, at p. 10; *ISKCON* v. *Bowen, supra*, at 669; *ISKCON* v. *Kearnes*, 454 F. Supp. 116, 121 (E.D. Cal. 1978), this Court agrees with that portion of *ISKCON* v. *Griffin*, 437 F. Supp. 666, 673 (W.D. Pa. 1977) wherein the court stated that if applied blindly such a position would "ignore the realities of human behavior." Fair goers come to the State Fair from across the State and the United States to enjoy themselves, and not to file criminal complaints, or to return some months in the future to appear as witnesses. Moreover, the Fairgrounds is a difficult area to police in general, due to its size and numbers of people, and disguised Krishnas without identification badges are hard to identify. Even where the criminal laws are invoked, the result is of little deterrent value. Some Krishna defendants jump bail, or as is frequently the case, are simply transferred by the Society to another state. Still other devotees just return to the fair the following year to be arrested once again, utilizing the same aggressive or deceitful techniques, and with the same materials. In perpetuating the problems with our "solutions" we have rekindled the meaning of the words of Justice Jackson:

> In my view, the First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well. When limits are reached which such communications must

> observe, can one go farther under the cloak of religious evangelism? Does what is obscene, or commercial, or abusive, or inciting become less so if employed to promote a religious ideology? I had not supposed that the rights of secular and non-religious communications were more narrow or in any way inferior to those of avowed religious groups.

Douglas v. *Jeannette*, 319 U.S. 157, 179 (1943).

As a more realistic approach to such problems as fraudulent accosting and misrepresentation, the defendants' enacted a focused booth restriction which addresses a compelling state interest -- the exchange of money. This regulation is not in any manner aimed at regulating First Amendment rights, and its effect on those rights is incidental in the truest sense of the word. In its purpose and effect, defendants' booth rule focuses on the realities of speech that does "no more than propose a commercial transaction." *Va. Pharmacy Bd.* v. *Va. Consumer Council, supra*, 425 U.S. at 771 n. 1. It seeks to guarantee the fair goer that the speaker meets the fundamental societal standard of being authentic and honest when dealing in commercial transfers. Thus, the booth rule serves to accurately identify the purveyor and his wares. The commercial speaker is in the best position to verify who they are and what they sell, and it is reasonable for the state to enact regulations which force such disclosures. Due to the "hardiness" of commercial speech, there is little chance of the state chilling First Amendment rights by its more watchful supervision of commercial activity in a booth. At the same time, since such speech is more objective there is less reason to tolerate it being inaccurate for fear that the speech will be silenced. Thus, the booth restriction, by requiring that a commercial message appear in its truthful form through "additional information, warnings, and disclaimers," serves to protect society from deception. In fact the government intrusion on plaintiffs First Amendment rights is minimal since "[i]t is not difficult to choose statements, designs, and devices which will not deceive." *Id.*

APPENDIX A — Memorandum-Decision and Order of Munson, J., dated August 25, 1980.

In the words of Justice Jackson:

> A common-sense test as to whether the Court has struck a proper balance of these rights is to ask what the effect would be if the right given to these Witnesses should be exercised by all sects and denominations. If each competing sect in the United States went after the householder by the same methods, I should think it intolerable. If a minority can put on this kind of drive in a community, what can a majority resorting the same tactics do to individuals and minorities? Can we give to one sect a privilege that we could not give to all, merely in the hope that most of them will not resort to it? Religious freedom in the long run does not come from this kind of license to each sect to fix its own limits, but comes of hard-headed fixing of those limits by neutral authority with an eye to the widest freedom to proselyte compatible with the freedom of those subject to proselyting pressures.

Douglas v. *Jeannette*, 319 U.S. 157, 180 (1943). It is obvious that it would be "intolerable" if we permitted a majority to resort to the same tactics employed by the Krishnas. Today the court has allowed the setting of reasonable limits on their behavior for the future. Let there be no doubt, the court does this, not because plaintiffs' habits or beliefs are shockingly different, but rather because plaintiffs' continued actions, under the credible evidence, resemble other segments of society whose anti-social behavior has never been tolerated by the law.

Based upon the findings of facts and conclusions of law stated above, plaintiffs' complaint is hereby dismissed.

It is so ordered.

Dated: August 25, 1980
Syracuse, New York

s/ HOWARD G. MUNSON
Howard G. Munson
Chief U.S. District Judge

APPENDIX A — Memorandum-Decision and Order of Munson, J., dated August 25, 1980.

FOOTNOTES

[1] *Douglas* v. *Jeannette*, 319 U.S. 157, 179 (1943).

[2] Emerson, *The System of Freedom of Expression* (1970) p. 10.

[3] *Id.* at 11.

[4] *Douglas* v. *Jeannette*, 319 U.S. at 182.

[5] *Id.* at 179.

[6] See Exhibit A attached hereto.

APPENDIX A — Memorandum-Decision and Order of Munson, J., dated August 25, 1980.

(Definition of activity)

1. ISKCON members will be engaged in a religious practice of:
   a. talking to or otherwise communicating with third parties about their religious views.
   b. disseminating religious materials including magazines, books, cards, records and other information.
   c. presenting gift-greeting items such as sanctified flowers and candy -- or incense sticks and other small items.
   d. requesting and accepting contributions from said third parties for their religious literature, establishments and programs.

(Registration, liaison and fees)

2. ISKCON will provide a liaison to provide the information indicated herein and represent the society in any other necessary communications with any appropriate fair, security and government officials (city, county or state).

3. ISKCON's public affairs office may be called collect in case the liaison cannot be located at a time of needed communication. The liaison will provide this number.

4. ISKCON members will register in person or by phone at the beginning of each fair, show or event giving names and ages of members and times and places of activity to appropriate police officials, (changes will be reported immediately);

5. ISKCON members as referred to herein means only those persons designated as such by the liaison not others.

6. ISKCON members will present to appropriate state officials copies of ISKCON's State and IRS tax exempt certificates to prove the legitimacy of their society.

Exhibit A

7. ISKCON members will pay all fees charged at the fair/event.

(Manner of activity)

8. ISKCON members will engage in said activities in a peaceable manner and without harassment to the public. Likewise, ISKCON members are entitled to due protection from harassment by the public, (including persons patronizing the fair/event, parties and their agents, contracted to run fair/event attractions and parties and their agents renting fair/event booths or facilities) as afforded by applicable Federal, State and local laws respecting breach of the peace, harassment, libel and slander etc...

9. ISKCON members while performing the activities described herein, will not be interferred with in any way by any fair/event, or involved government, agency, agents or employees.

10. ISKCON members will be issued with standard ISKCON I.D. cards and will wear them in a visible manner;

11. ISKCON members will in no way express that any fair or government agency or any organization other than ISKCON is sponsoring and/or connected with their activities.

12. ISKCON members will not massively distribute hand bills which may lead to littering, our smallest literature being a substantial magazine given only to those agreeing to take it;

13. ISKCON members will not install or cause to be installed any type of structure such as but not limited to counters, tables, chairs and signs, unless a special request is made and approved;

14. ISKCON members, no more than two at a time, will approach and engage in said activities, any individual person or party unless consented to by that party;

15. ISKCON members will not engage in any deliberate touching of unconsenting persons;

16. ISKCON members will not use any sound amplification.

(Place of activity and number of representatives)

17. ISKCON members will not perform said activities at any area not open to the general public and specifically not in private concession areas and other areas rented by private parties;

18. ISKCON members may engage in said activities in buildings open to the public only as follows:
    a. At open lobbies and hallways;
    b. At exhibition areas -- at locations at least 10 feet from any exhibit or booth;
    c. Not in any stairs
    d. Not in the seating areas of any arena, lecture or performance facility.

19. ISKCON members will not perform said activities with people engaged in sitting and watching a performance or other special attraction, or waiting in a ticket line, coat line or refreshment line unless prior unsolicited consent in expressed.

20. ISKCON members will not operate directly in front of any entrances /exits to the fair/event or any entrances/ exits to any buildings. Directly in front, means here. no closer than 15 feet from the main entrances/exits and 10 feet from all others.

Exhibit A

21. ISKCON, by its liaison or public affairs office only, may agree to further limitation of the locations of said activities (after discussing with appropriate officials, referred to herein) if the need for such is clearly demonstrated, to safeguard a legitimate fair/event function or interest.

APPENDIX B – Decision of United States Court of Appeals, Second Circuit, dated August 28, 1980.

80-7709

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 28th day of August, one thousand nine hundred and eighty.

Present:

HONORABLE WALTER R. MANSFIELD,
HONORABLE AMALYA L. KEARSE,

Circuit Judges.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC. AND, ON BEHALF OF THEMSELVES AND ALL INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS MEMBERS, AND ALAN ATTIAS, A/K/A AJA DASA, AND KENNETH L. SOLOMON, A/K/A KESIHANTA,

Plaintiffs-Appellants

v.

J. ROGER BARBER, in his official capacity as Commissioner of the DEPT. OF AGRICULTURE AND MARKETS OF THE STATE OF NEW YORK, and THOMAS G. YOUNG, Director of the N.Y. State Industrial Exhibit Authority, and JAMES G. GARLICK, Acting Director of the N.Y. State Industrial Exhibit Authority,

Defendants-Appellees.

80-7709

UNITED STATES COURT OF APPEALS
FILED
AUG 28 1980
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX B — Decision of United States Court of Appeals, Second Circuit, dated August 28, 1980.

In support of plaintiffs' appeal from a judgment of the District Court for the Northern District of New York entered by Chief Judge Howard G. Munson on August 25, 1980, dismissing their complaint filed pursuant to Title 42 U.S.C. §1983 seeking on First Amendment grounds to enjoin enforcement of New York State Fair booth regulations adopted by the defendants which impose conditions on solicitation of funds at the Fair, application of which restricts plaintiffs to fund solicitation from booths, plaintiffs move to stay enforcement of the judgment and for a preliminary injunction allowing them to circulate and solicit money freely at the Fair.

The motion is denied. The district court's detailed findings (contained in Judge Munson's thorough 42-page decision) of fraudulent and disruptive conduct by plaintiffs' representatives at the Fair lend support to defendants' contention that under the circumstances the regulations as applied in this case may constitute a reasonable exercise of the state's police power in the interest of public safety and welfare.

Moreover, to grant the motion would be summarily to reverse the district court. Such hasty action is unjustified. Our decision does not intimate any views as to the ultimate merits of the appeal itself.

s/ WALTER R. MANSFIELD
WALTER R. MANSFIELD

s/ AMALYA L. KEARSE
AMALYA L. KEARSE